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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,) CV-14-5344-BLF
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) DECEMBER 9, 2016
)
ARISTA NETWORKS, INC.,) VOLUME 12
)
DEFENDANT) PAGES 2418-2655
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
BY: DAVID A. NELSON
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CHICAGO, IL 60661

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
BY: SEAN PAK
50 CALIFORNIA STREET, 22ND FLOOR
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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APPEARANCES (CONTINUED)

FOR THE DEFENDANT: KEKER & VAN NEST, LLP
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1 SAN JOSE, CALIFORNIA

DECEMBER 9, 2016

2 P R O C E E D I N G S

3 (COURT CONVENED AT 8:30 A.M.)

4 THE COURT: ALL RIGHT. I THINK WE HAVE A LITTLE BIT
5 TO TAKE CARE OF TODAY, BUT I'M HOPEFUL THAT YOU WILL BE ABLE TO
6 REDUCE THE SCOPE OF IT FOR ME.

7 SO WHY DON'T I LET YOU TELL ME WHAT'S ON OUR AGENDA THIS
8 MORNING.

9 MR. VAN NEST: THANK YOU. GOOD MORNING, YOUR HONOR.

10 THE COURT: GOOD MORNING.

11 MR. VAN NEST: I BELIEVE THAT A NUMBER OF OBJECTIONS
12 HAVE BEEN RESOLVED, BUT NOT ALL.

13 THE COURT: ALL RIGHT.

14 MR. VAN NEST: WE EXPECT TO CLOSE OUR ARISTA CASE
15 THIS MORNING.

16 WE HAVE ONE OBJECTION TO ONE OF THEIR REBUTTAL
17 PRESENTATIONS. THEY WANT TO PRESENT SOME DEPOSITION TESTIMONY,
18 AND MS. NILL SANCHEZ IS GOING TO ADDRESS THAT.

19 AND THEN WE HAVE A COUPLE OF OTHER OBJECTIONS, I THINK, TO
20 THE REBUTTAL CASE.

21 AND I'M NOT SURE THERE ARE ANY REMAINING CISCO OBJECTIONS
22 TO WHAT'S LEFT IN OUR CASE IN CHIEF.

23 MR. PAK: I DON'T THINK SO, YOUR HONOR.

24 MR. VAN NEST: I THINK THOSE HAVE BEEN RESOLVED.

25 MR. PAK: AND I THINK ON, DR. CHEVALIER, WILL BE PART

08:31:23 1 OF THE REBUTTAL CASE, WE HAVE BEEN ABLE TO RESOLVE ALL THE
08:31:26 2 DISPUTES ON THE SLIDES.

08:31:28 3 THE COURT: YOU HAVE RESOLVED THEM. OKAY.

08:31:29 4 MR. VAN NEST: SO I WILL ASK MS. NILL SANCHEZ TO
08:31:33 5 ADDRESS MR. SWEENEY.

08:31:34 6 THE COURT: SWEENEY, THAT WOULD BE GREAT.

08:31:36 7 AND ALTHOUGH THERE ARE SOME REDUCTIONS TO THE
08:31:38 8 DESIGNATIONS, THAT'S REALLY NOT YOUR OBJECTION.

08:31:40 9 MR. VAN NEST: NO, THAT'S NOT OUR OBJECTION.

08:31:43 10 MS. SANCHEZ: GOOD MORNING, YOUR HONOR.

08:31:44 11 MY NAME IS ANDREA NILL SANCHEZ ON BEHALF OF DEFENDANT
08:31:47 12 ARISTA NETWORKS.

08:31:48 13 YOUR HONOR, THE LAW IS CLEAR THAT REBUTTAL SHOULDN'T
08:31:51 14 INCLUDE CUMULATIVE EVIDENCE THAT COULDN'T HAVE BEEN USED IN THE
08:31:54 15 PARTIES' CASE IN CHIEF.

08:31:56 16 AND THIS WAS CISCO'S UNDERSTANDING OF THE LAW AS WELL, OR
08:31:58 17 AT LEAST THAT'S WHAT'S STATED IN THE JOINT PRETRIAL STATEMENTS
08:32:04 18 THAT WERE SUBMITTED TO THE COURT. HOWEVER, THESE PORTIONS OF
08:32:06 19 MR. SWEENEY'S DEPOSITION THAT ARE CURRENTLY AT ISSUE ARE ONES
08:32:07 20 THAT CISCO PLANNED ON USING IN ITS CASE IN CHIEF FROM THE VERY
08:32:10 21 BEGINNING, STARTING WITH DR. ALMEROOTH'S OPENING REPORT UP,
08:32:13 22 THROUGH ITS OPENING ARGUMENTS WHICH DISCUSSED THE DESIGNATIONS
08:32:16 23 AND EVEN IN ITS FIRST DISCLOSURES IN THE CASE.

08:32:19 24 AND I HAVE SOME DOCUMENTS TO GIVE TO THE COURT.

08:32:33 25 MAY I APPROACH THE BENCH?

08:32:35 1 THE COURT: YES. THANK YOU.

08:32:38 2 MS. SANCHEZ: SO IF YOU TAKE A LOOK AT THE FIRST
08:32:43 3 DOCUMENT I HANDED OVER, THIS IS DR. ALMEROOTH'S OPENING REPORT,
08:32:47 4 AND IF YOU TURN TO PAGE 45, ONE OF THE DOCUMENTS THAT'S
08:32:52 5 PROMINENTLY FEATURED IN MR. SWEENEY'S DEPOSITION, OR AT LEAST
08:32:56 6 THE PART OF THE DEPOSITION THAT CISCO HAS DESIGNATED, IS QUOTED
08:33:00 7 THERE ON THAT PAGE.

08:33:02 8 AND IF YOU LOOK AT ONE OF THE NEXT DOCUMENTS WHICH
08:33:05 9 CONSISTS OF SLIDES FROM CISCO'S OPENING ARGUMENT, YOU WILL SEE
08:33:09 10 THERE'S A PHOTO OF MR. SWEENEY AND YOU WILL ALSO SEE THAT HIS
08:33:13 11 DESIGNATION -- OR HIS DEPOSITION IS DIRECTLY QUOTED IN THOSE
08:33:17 12 SLIDES. AND IN ADDITION, IT CITES THE SAME DOCUMENT THAT'S
08:33:21 13 QUOTED IN DR. ALMEROOTH'S OPENING REPORT.

08:33:23 14 THE COURT: IS THIS THE PORTION OF MR. SWEENEY'S
08:33:26 15 TESTIMONY OR -- IS THIS DOCUMENT IN EVIDENCE? WAS IT
08:33:31 16 SUBMITTED? DO YOU KNOW? IT'S HARD TO REMEMBER.

08:33:33 17 MR. PAK: YOUR HONOR, 3241, THAT HAS NOT YET BEEN
08:33:38 18 ADMITTED.

08:33:38 19 THE COURT: OKAY. THANK YOU.

08:33:39 20 GO AHEAD.

08:33:40 21 MS. SANCHEZ: BUT IT WAS PRESENTED TO THE JURY AS
08:33:42 22 PART OF THE OPENING ARGUMENT.

08:33:43 23 THE COURT: YES.

08:33:43 24 MS. SANCHEZ: AND DURING THAT OPENING ARGUMENT,
08:33:45 25 MR. NELSON ACTUALLY PROMISED THE JURY THAT IT WOULD HEAR

08:33:48 1 TESTIMONY FROM MR. SWEENEY THAT WOULD SUPPORT ORIGINALITY,
08:33:51 2 DIRECTLY QUOTING FROM THE SAME PORTIONS OF THE DEPOSITION IT
08:33:54 3 NOW SEEKS TO PLAY.

08:33:56 4 AND JUST TO REMIND YOUR HONOR, CISCO THEN DISCLOSED
08:33:59 5 DESIGNATIONS AT THE BEGINNING OF THE CASE IN CHIEF THAT INCLUDE
08:34:02 6 THE DESIGNATIONS IT'S NOW SEEKING TO PLAY IN ITS REBUTTAL. AND
08:34:06 7 IF THOSE DESIGNATIONS LOOK FAMILIAR, IT IS BECAUSE IT INCLUDES
08:34:10 8 NOT SOME, BUT ALL OF THE DESIGNATIONS IT'S SEEKING TO PLAY IN
08:34:13 9 ITS REBUTTAL.

08:34:14 10 THE THIRD DOCUMENT I HANDED OVER IS AN E-MAIL FROM
08:34:17 11 MR. JORDAN JAFFE, WHO IS COUNSEL FOR CISCO.

08:34:19 12 THE COURT: I'M LOOKING FOR THAT. THAT'S ONE I DON'T
08:34:23 13 HAVE, UNLESS IT'S COMBINED HERE, I MAY HAVE OVERLOOKED IT.

08:34:31 14 MS. SANCHEZ: WELL, I CAN SUMMARIZE THE CONTENTS.

08:34:33 15 THE COURT: WOULD YOU? THAT WOULD BE GREAT.

08:34:35 16 MS. SANCHEZ: IT SHOWS THE NIGHT BEFORE MR. SWEENEY'S
08:34:37 17 DEPOSITION WAS GOING TO BE PLAYED, CISCO PULLED MOST OF ITS
08:34:40 18 DESIGNATIONS DUE TO "TIME CONSTRAINTS."

08:34:43 19 AND THAT SHOWS THAT, YOU KNOW, CISCO FULLY INTENDED TO USE
08:34:46 20 THESE PORTIONS OF MR. SWEENEY'S DEPOSITION IN ITS CASE IN CHIEF
08:34:49 21 AND IT SIMPLY MADE A TACTICAL DECISION NOT TO DO SO.

08:34:52 22 AND CISCO IS PERFECTLY WITHIN ITS RIGHT TO DO THAT.
08:34:56 23 HOWEVER, ALLOWING CISCO TO PLAY THESE DESIGNATIONS AT THIS
08:34:59 24 POINT IN ITS CASE DURING REBUTTAL WHEN THE PRESENTATION OF
08:35:02 25 EVIDENCE IS SIGNIFICANTLY CONSTRAINED, WOULD PREJUDICE ARISTA.

08:35:07 1 ARISTA WAS PLANNING ON CALLING MR. SWEENEY LIVE, IN FACT, I
08:35:11 2 THINK ARISTA INFORMED THE COURT OF THAT INTENTION.

08:35:13 3 THE COURT: YEAH.

08:35:13 4 MS. SANCHEZ: AND THE REASON FOR DOING SO WAS TO
08:35:15 5 ALLOW MR. SWEENEY TO RESPOND TO THE DEPOSITION DESIGNATIONS
08:35:19 6 THAT CISCO, FOR THE LONGEST TIME, INDICATED THAT IT WAS GOING
08:35:21 7 TO PLAY.

08:35:22 8 AND WHEN CISCO DECIDED TO DO THAT, WHICH AGAIN IT WAS
08:35:26 9 WITHIN ITS RIGHT TO DO SO, ARISTA DECIDED NOT TO BRING
08:35:29 10 MR. SWEENEY IN AND WASTE THE COURT AND THE JURY'S TIME, HAVING
08:35:33 11 HIM RESPOND TO SUCH A SMALL PORTION OF THE DEPOSITION THAT WAS
08:35:36 12 ULTIMATELY PLAYED.

08:35:38 13 THE COURT: ALL RIGHT. THANK YOU.

08:35:40 14 MR. PAK?

08:35:40 15 MR. PAK: YES.

08:35:45 16 FIRST OF ALL, YOUR HONOR, I WILL NOTE THAT AS YOUR HONOR
08:35:49 17 WILL RECALL, ARISTA ASKED FOR A SURREBUTTAL IN THIS CASE, AND
08:35:53 18 THE SURREBUTTAL, YOUR HONOR GRANTED THAT REQUEST, WHICH MEANS
08:35:58 19 THAT IN TERMS OF OUR REBUTTAL RESPONSE, WE HAVE THE ABILITY TO
08:36:02 20 RESPOND TO ARGUMENTS THAT THEY RAISE IN THEIR CASE IN CHIEF AS
08:36:06 21 PART OF OUR REBUTTAL CASE, WHETHER IT'S AFFIRMATIVE DEFENSE OR
08:36:11 22 NOT, AND THAT'S THE GROUNDS THAT YOUR HONOR GAVE FOR GRANTING
08:36:14 23 THE SURREBUTTAL.

08:36:16 24 THE COURT: THEY DON'T HAVE A SURREBUTTAL ON THIS
08:36:18 25 ISSUE.

08:36:19 1 MR. PAK: THEY DO, YOUR HONOR.

08:36:20 2 THE COURT: REALLY? I DON'T THINK SO.

08:36:21 3 MS. SANCHEZ: NO, YOUR HONOR, OUR SURREBUTTAL GOES TO
08:36:25 4 FAIR USE.

08:36:26 5 MR. PAK: BUT MORE IMPORTANTLY, YOUR HONOR, HERE IS
08:36:30 6 THE REASON WHY THIS IS HIGHLY RELEVANT AT THIS POINT IN THE
08:36:33 7 CASE.

08:36:33 8 THE COURT: AND IN FACT, THEY ONLY GET REBUTTAL ON
08:36:34 9 THE ISSUES THAT THEY HAVE THE BURDEN OF PROOF. THAT IS THE
08:36:36 10 ORDER THAT I MADE.

08:36:37 11 MR. PAK: OKAY. GOOD. THANK YOU.

08:36:38 12 MS. SANCHEZ: AND IN FACT, IN ITS JOINT PRETRIAL
08:36:41 13 STATEMENT, CISCO ARGUED THAT ARISTA SHOULDN'T BE PERMITTED A
08:36:44 14 SURREBUTTAL THAT PROVIDES CUMULATIVE EVIDENCE WHICH WOULD
08:36:44 15 REITERATE POSITIONS AND EVIDENCE THAT WERE BROUGHT AS PART OF
08:36:48 16 ITS CASE IN CHIEF.

08:36:49 17 MR. PAK: YOUR HONOR, THIS GOES TO -- SO LET ME
08:36:52 18 ADDRESS THIS POINT. AS WE ALL KNOW, AND PURSUANT TO THE
08:36:56 19 PROTECTABILITY YOUR HONOR, ONE OF THE AFFIRMATIVE DEFENSES
08:37:00 20 STILL LEFT IN THE CASE FOR ARISTA IS SCÈNES À FAIRE.

08:37:03 21 AND WE HAVE TESTIMONY DIRECTLY FROM DR. BLACK WHERE WE
08:37:07 22 TALKED ABOUT, AND I CAN QUOTE SOME OF THE TRIAL TESTIMONY, BUT
08:37:10 23 HE WAS VERY CLEAR IN THE TRIAL TESTIMONY THAT ONE OF THE BASIS
08:37:13 24 FOR THE SCÈNES À FAIRE DEFENSE ON BEHALF OF ARISTA IS THE
08:37:17 25 FOLLOWING: THAT THERE ARE LIMITED CHOICES, THERE ARE A LARGE

08:37:21 1 NUMBER OF CONSTRAINTS WHEN IT COMES TO THE FEATURES THAT YOU
08:37:24 2 ARE IMPLEMENTING; AND SPECIFICALLY WITH RESPECT TO NAMING
08:37:28 3 COMMANDS, THAT THERE ARE SIGNIFICANT CONSTRAINTS FROM HIS
08:37:32 4 PERSPECTIVE.

08:37:32 5 AND HE CITED A NUMBER OF EVIDENCE AND PRESENTED ARGUMENTS
08:37:35 6 TO THAT EFFECT, NOT JUST AS A REBUTTAL TO OUR ORIGINALITY
08:37:39 7 STORY, BUT AS AN AFFIRMATIVE DEFENSE TO INFRINGEMENT UNDER
08:37:43 8 SCÈNES À FAIRE.

08:37:44 9 MR. SWEENEY'S TESTIMONY, WHICH IS LIMITED IN NATURE THAT
08:37:47 10 WE ARE SEEKING TO PLAY.

08:37:48 11 THE COURT: BUT MR. SWEENEY IS TALKING ABOUT THE
08:37:51 12 SUBJECTIVE PROCESS, WHICH I THINK GOES TO ORIGINALITY, AND YOU
08:37:53 13 ARE TALKING ABOUT SCÈNES À FAIRE, WHICH TALKS ABOUT EXTERNAL
08:37:57 14 CONSTRAINTS.

08:37:57 15 AND I DON'T RECALL IT, AND I RAN THROUGH ALL OF THIS, EVEN
08:38:01 16 THE PARTS THIS MORNING, BUT THAT'S REALLY ALL THAT --
08:38:06 17 MR. SWEENEY'S TESTIMONY, FIRST OF ALL, APPEARS TO BE EXTREMELY
08:38:09 18 CUMULATIVE, FROM ALL THAT WE'VE HEARD. BUT I DON'T THINK IT
08:38:13 19 ACTUALLY ADDRESSES THE SCÈNES À FAIRE ISSUE BECAUSE SHOW ME A
08:38:18 20 PAGE --

08:38:18 21 MR. PAK: YES, I WILL, YOUR HONOR.

08:38:20 22 SO THIS IS -- JUST TO SET THE CONTEXT, THIS IS DR. BLACK'S
08:38:23 23 TRIAL TESTIMONY, PAGE 2113, LINE 7 THROUGH 9, AS PART OF THE
08:38:30 24 SCÈNES À FAIRE DEFENSE, HE SAYS "SO IT SAYS, WHEN NAMING A
08:38:34 25 COMMAND, TRY TO PICK NAMES THAT WOULD BE FAMILIAR TO PEOPLE IN

08:38:39 1
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08:38:41 4
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08:38:46 6
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08:38:58 9
08:39:00 10
08:39:05 11
08:39:09 12
08:39:10 13
08:39:13 14
08:39:17 15
08:39:23 16
08:39:23 17
08:39:28 18
08:39:32 19
08:39:36 20
08:39:37 21
08:39:42 22
08:39:45 23
08:39:48 24
08:39:50 25

THE INDUSTRY."

THE COURT: SURE.

MR. PAK: AND THEN HE GOES TO GIVE AN EXAMPLE.

THE COURT: YOU LOOK AT THE PARSER-POLICE MANIFESTO
AS WELL.

MR. PAK: THAT'S CORRECT.

AND THEN IF YOUR HONOR GOES TO MR. SWEENEY'S TESTIMONY,
PAGE 184, LINE 7.

THE COURT: LET ME JUST CATCH UP WITH YOU. YES.

MR. PAK: PAGE 184, LINE 7, TO PAGE 184, LINE 11, THE
TESTIMONY IS -- IT STATES, "I AGREE THE CLI NAMING IS VERY
SUBJECTIVE."

SO THIS ISN'T ABOUT JUST THE OVERALL PROCESS, BUT THIS IS
DIRECT TESTIMONY IN EVIDENCE FROM ARISTA SAYING THAT THE
PROCESS OR THE SELECTION OF COMMAND NAMES IS A VERY SUBJECTIVE
DECISION.

AND THAT'S EXACTLY THE POINT THAT DR. BLACK MAKES IN THE
OPPOSITION TO SAY THAT CLI NAMING IS NOT SUBJECTIVE, IT IS
SUBJECT TO A NUMBER OF EXTERNAL CONSTRAINTS THAT DICTATE THE
NAMING.

AND SO THIS NAMING TESTIMONY, YOUR HONOR, WHICH COMES OUT
OF DOCUMENTS, AND THAT'S EXACTLY THE DOCUMENT THAT WE WERE
DISCUSSING BEFORE, EXHIBIT 3241, THAT STATEMENT COMES OUT OF
THAT DOCUMENT.

I THINK AT A MINIMUM, YOUR HONOR, WE SHOULD BE ALLOWED TO

08:39:53 1 PLAY THAT CLIP, WHICH WOULD BE WHEN I WILL INTRODUCE THIS
08:39:57 2 DOCUMENT 3241, TO REBUT DR. BLACK'S SPECIFIC TESTIMONY IN
08:40:01 3 SCÈNES À FAIRE, THAT CLI NAMING IS CONSTRAINED. I MEAN, I
08:40:05 4 THINK THAT'S A FAIR REBUTTAL.

08:40:06 5 THE COURT: WELL, MS. SANCHEZ, I AM INCLINED TO --
08:40:09 6 AND PERHAPS INSTRUCTING THE JURY VERY SPECIFICALLY THAT THE
08:40:12 7 EVIDENCE GOES ONLY TO THE SCÈNES À FAIRE DEFENSE AND CAN BE
08:40:15 8 CONSIDERED FOR NO OTHER PURPOSE, REDUCE IT TO JUST GETTING THE
08:40:19 9 EXHIBIT IN, AND MOVE ON.

08:40:21 10 MS. SANCHEZ: YOUR HONOR, IN THE END, THE EVIDENCE
08:40:23 11 SHOULDN'T BE CUMULATIVE AS WELL.

08:40:24 12 IT'S NOT JUST A QUESTION OF WHETHER IT COULD HAVE BEEN
08:40:27 13 PRESENTED IN CISCO'S CASE IN CHIEF, IT ALSO SHOULD NOT ADD ON
08:40:30 14 TO WHAT CISCO HAS ALREADY PRESENTED.

08:40:33 15 AND ULTIMATELY, AS YOU EXPLAIN, THESE DESIGNATIONS
08:40:37 16 BASICALLY DISCUSS THE PROCESS FOR COMING UP WITH THESE
08:40:40 17 COMMANDS, AND THAT'S A PROCESS THAT CISCO HAS TRIED TO PORTRAY
08:40:44 18 AS CREATIVE.

08:40:45 19 AND WE HEARD VERY SIMILAR EVIDENCE FROM DR. ALMEROTH,
08:40:47 20 MR. LOUGHEED, MR. REMAKER AND SIMILAR SUBMISSIONS FROM
08:40:53 21 MR. DUDA.

08:40:54 22 THE COURT: WELL, MR. SWEENEY'S IS --

08:40:56 23 MR. PAK: IT'S A LITTLE BIT DIFFERENT POSITION,
08:40:56 24 YOUR HONOR.

08:40:58 25 THE COURT: BUT MR. PAK, THE OTHER ARGUMENT THAT IS

08:41:02 1 RAISED IS THAT YOU HAD DESIGNATED SWEENEY AS A WITNESS IN YOUR
08:41:05 2 CASE IN CHIEF. NOW, SWEENEY IS UNDER ARISTA'S CONTROL AND THEY
08:41:08 3 COULD HAVE BROUGHT HIM HERE AND COULD HAVE CHANGED THEIR
08:41:12 4 OPPORTUNITY TO PRESENT A MORE BALANCED VIEW OF THE EVIDENCE
08:41:17 5 LIMITED ON CROSS-EXAMINATION BY HIS STATEMENTS IN HIS
08:41:19 6 DEPOSITION.

08:41:20 7 AND YOU HAVE NOW DEPRIVED THEM OF THAT BECAUSE ONCE YOU
08:41:24 8 PULL THE DESIGNATION FROM YOUR CASE IN CHIEF, THEY HAVE NO
08:41:27 9 REASON TO BRING HIM AND USE THEIR VALUABLE TIME.

08:41:30 10 SO THAT IS, YOU KNOW, I THINK IT'S A -- YOU ARE ON THIN
08:41:35 11 ICE ANYWAY, BUT I THINK THAT THIS PREJUDICE MAY ULTIMATELY PUSH
08:41:39 12 IT OVER THE EDGE FOR ME.

08:41:41 13 MR. PAK: LET ME ADDRESS THAT, YOUR HONOR.

08:41:42 14 SO FIRST OF ALL, HE WAS A CORPORATE REPRESENTATIVE. HE
08:41:45 15 WAS NOT JUST AN INDIVIDUAL WITNESS. HE GAVE BINDING TESTIMONY
08:41:49 16 ON BEHALF OF THE COMPANY. WE CAN USE CORPORATE TESTIMONY FOR
08:41:53 17 ANY PURPOSE.

08:41:54 18 THE COURT: OF COURSE YOU CAN.

08:41:55 19 MR. PAK: AND THE SECOND THING IS, THEY DID COUNTER
08:41:58 20 DESIGNATE, YOUR HONOR, TO THIS SPECIFIC PORTION OF THE
08:42:00 21 TESTIMONY.

08:42:00 22 SO THE REALITY IS, EVEN IF THEY HAD BROUGHT HIM IN, I
08:42:03 23 DON'T THINK HE COULD CONTRADICT THE TESTIMONY HE GAVE OR THE
08:42:06 24 HISTORICAL DOCUMENTS.

08:42:07 25 THE COURT: YOU KNOW, YOU ARE ABSOLUTELY RIGHT.

08:42:09 1 AND HE IS -- AND YOU WOULD EFFECTIVELY, I'M SURE, HAVE
08:42:12 2 CROSS-EXAMINED HIM IF HE HAD STRAYED FROM HIS DEPOSITION
08:42:15 3 TESTIMONY.

08:42:15 4 MR. PAK: THAT'S RIGHT, YOUR HONOR.

08:42:16 5 THE COURT: SO I JUST PRESUME HE WOULD HAVE TESTIFIED
08:42:21 6 CONSISTENT WITH HIS DEPOSITION.

08:42:23 7 THE ISSUE IS HE BECOMES FLESH AND BLOOD TO THE JURY. THE
08:42:27 8 QUESTIONS OF HAD HE COME IN, IN ARISTA'S CASE IN CHIEF, COULD
08:42:30 9 HAVE BEEN BROADENED. THERE ARE MANY STRATEGIC DECISIONS THAT
08:42:34 10 ARISTA COULD HAVE MADE, WHICH IS WHAT THEY SUGGEST HERE, THAT
08:42:37 11 ARE THE BASIS OF THE PREJUDICE.

08:42:39 12 ON TOP OF THE EVIDENCE BEING CUMULATIVE, BEING marginally
08:42:43 13 RELATED TO YOUR SCÈNES À FAIRE, I MEAN, I THINK YOU DO EEK OUT
08:42:46 14 A PERSUASIVE ARGUMENT ON THAT. BUT WHEN I CONSIDER THESE OTHER
08:42:50 15 FACTORS ON BALANCE, I THINK THAT, ULTIMATELY, I AM PERSUADED BY
08:42:59 16 THE PREJUDICIAL EFFECT OF YOUR CHANGE IN STRATEGY OF DEPRIVING
08:43:02 17 THEM THE OPPORTUNITY TO BRING THIS WITNESS.

08:43:03 18 NOW IF THIS WITNESS HADN'T BEEN UNDER THEIR CONTROL AND
08:43:07 19 THEY HAD NOT SENT OUT A SUBPOENA TO THIS WITNESS, WE MIGHT HAVE
08:43:11 20 BEEN TALKING ABOUT IT DIFFERENTLY, BUT --

08:43:13 21 MR. PAK: MAY I SUGGEST ONE POSSIBLE COMPROMISE.

08:43:15 22 I UNDERSTAND, TO THE EXTENT THAT THEY ARE CONCERNED ABOUT
08:43:17 23 TESTIMONY FROM MR. SWEENEY, AND THERE WAS A NUMBER OF QUESTIONS
08:43:21 24 THAT GO TO HIS INTERPRETATION OF THIS DOCUMENT, I AM PERFECTLY
08:43:25 25 HAPPY NOT PLAYING ANY OF THE INTERPRETIVE TESTIMONY WITH

08:43:30 1 RESPECT TO HOW INTERPRETIVE THE DOCUMENT OR WHETHER HE'S GOT
08:43:36 2 OTHER VIEWS THAT MAY BE CONSISTENT OR INCONSISTENT WITH THE
08:43:40 3 DOCUMENT.

08:43:41 4 BUT I THINK THIS EVIDENCE, 3241, WHICH IS AN
08:43:44 5 ARISTA-PRODUCED DOCUMENT, IT'S ON THE TRIAL LIST, IT
08:43:46 6 SPECIFICALLY REBUTS DR. BLACK'S TESTIMONY IN THE SCÈNES À
08:43:49 7 FAIRE. HE'S NOT JUST TALKING ABOUT PROCESS, HE SPECIFICALLY
08:43:51 8 SAYS, THE ACT OF CLI NAMING IS HIGHLY CONSTRAINED. THIS
08:43:56 9 DOCUMENT IS AN ARISTA DOCUMENT THAT SAYS CLI NAMING IS VERY
08:43:59 10 SUBJECTIVE.

08:44:00 11 SO MY COMPROMISE OFFER, YOUR HONOR, WOULD BE I WOULDN'T
08:44:03 12 PLAY ANY OF HIS INTERPRETIVE TESTIMONY, BUT I WOULD LIKE TO BE
08:44:06 13 ABLE TO ADMIT THROUGH AUTHENTICATION, THIS DOCUMENT 3241 TO BE
08:44:11 14 ABLE TO REBUT DR. BLACK'S SCÈNES À FAIRE DEFENSE.

08:44:14 15 AND I THINK THAT'S A FAIR COMPROMISE, YOUR HONOR.

08:44:16 16 MS. SANCHEZ: YOUR HONOR, THIS DOCUMENT ISN'T AN
08:44:19 17 ARISTA DOCUMENT, IT'S A DOCUMENT FROM THE TIME THAT MR. SWEENEY
08:44:21 18 WAS AT CISCO. AND I WOULD ARGUE THAT --

08:44:24 19 THE COURT: IS THAT RIGHT?

08:44:25 20 MR. PAK: YOUR HONOR, I MISSPOKE.

08:44:26 21 THIS IS MR. SWEENEY'S DOCUMENT FROM HIS DAYS AT CISCO,
08:44:30 22 YOUR HONOR, THAT'S CORRECT.

08:44:32 23 MS. SANCHEZ: AND I WOULD ALSO ARGUE THAT CISCO HAS
08:44:34 24 FAILED TO PRESENT A NON-HEARSAY PURPOSE FOR INTRODUCING THIS
08:44:37 25 ARGUMENT.

08:44:37 1 IN FACT, IT APPEARS THEY ARE INTENDING TO INTRODUCE IT FOR
08:44:40 2 THE TRUTH OF THE MATTER TO SHOW THAT --

08:44:42 3 THE COURT: WELL, IT'S NOT GOING TO COME IN IF IT'S A
08:44:45 4 CISCO DOCUMENT. I DON'T HAVE IT IN FRONT OF ME, SO I MISSED
08:44:47 5 THE DATES ON IT. AND I KNOW MR. SWEENEY WORKED FOR BOTH
08:44:50 6 COMPANIES.

08:44:51 7 MR. PAK: YES. SO IN THAT CASE, YOUR HONOR -- LET ME
08:44:53 8 UNDERSTAND THAT, YOUR HONOR.

08:44:54 9 SO THIS IS A CISCO DOCUMENT, BUT HE WAS AN EMPLOYEE OF
08:44:57 10 CISCO, NOW HE'S AN ARISTA EMPLOYEE. AS AN AUTHENTIC DOCUMENT,
08:45:04 11 THIS IS A DOCUMENT THAT'S BEEN PRODUCED AS A BUSINESS RECORD
08:45:07 12 DOCUMENT, SO I DON'T UNDERSTAND WHY THIS IS HEARSAY WITH
08:45:10 13 RESPECT TO THE ISSUES THAT ARE AT ISSUE IN THIS CASE.

08:45:11 14 THE COURT: I THINK YOU JUST MISSED YOUR CHANCE IN
08:45:15 15 SUBMITTING IT.

08:45:16 16 MR. PAK: OKAY. THANK YOU.

08:45:17 17 THE COURT: SO I WILL SUSTAIN THE OBJECTION TO ANY OF
08:45:18 18 THE PORTIONS OF MR. SWEENEY'S DEPOSITION.

08:45:21 19 OKAY. SO THAT TAKES CARE OF ARISTA'S OBJECTIONS.

08:45:27 20 IS THAT THE ONLY THING THAT WAS LEFT ON THAT --

08:45:29 21 MR. PAK: NO, THAT WASN'T THE ONLY THING.

08:45:32 22 MR. VAN NEST: THERE ARE ONE OR TWO OTHERS,
08:45:33 23 YOUR HONOR, THAT MR. WONG WILL ADDRESS.

08:45:35 24 THE COURT: SO GOOD MORNING MR. WONG.

08:45:37 25 MR. WONG: GOOD MORNING, YOUR HONOR.

08:45:38 1 I'M GOING TO FOCUS ON -- WE NARROWED DR. ALMEROTH'S
08:45:41 2 OBJECTIONS. I'M JUST GOING TO PASS UP -- THERE ARE TWO SUMMARY
08:45:43 3 EXHIBITS THAT WE ARE OBJECTING TO AS IMPROPER SUMMARIES, AND I
08:45:48 4 WILL PASS UP THIS FIRST ONE.

08:45:51 5 THE COURT: OKAY. LET'S SEE BECAUSE THIS IS --

08:45:55 6 MR. WONG: THIS IS TRIAL EXHIBIT NUMBER 4797.

08:45:58 7 THE COURT: OH, 97. OH, ALL RIGHT. WELL, THAT
08:46:01 8 WASN'T ONE OF THE ONES THAT GOT MY ATTENTION WHEN I READ THIS,
08:46:04 9 ALTHOUGH I HAVEN'T SEEN THE EXHIBIT.

08:46:05 10 MR. WONG: THEY HAVE WITHDRAWN QUITE A FEW,
08:46:08 11 YOUR HONOR.

08:46:08 12 THE COURT: IS THAT ON THIS LIST?

08:46:10 13 MR. NELSON: 4797, I'M JUST USING AS A DEMONSTRATIVE,
08:46:13 14 I'M NOT ADMITTING IT.

08:46:15 15 SO SIMILAR TO WHAT WE TALKED ABOUT LAST WEEK, SO I THINK
08:46:17 16 THAT TAKES CARE OF THAT.

08:46:19 17 THE COURT: OH, THAT'S FINE. YOU ARE OFFERING THIS
08:46:24 18 AS A DEMONSTRATIVE?

08:46:25 19 MR. NELSON: YES.

08:46:27 20 THE COURT: ARE YOU OBJECTING, MR. WONG, AS A
08:46:28 21 DEMONSTRATIVE?

08:46:29 22 MR. WONG: NO, I THINK THAT'S PROBABLY NOT WORTH THE
08:46:31 23 TIME.

08:46:31 24 THE COURT: THAT'S GREAT. OKAY. GOOD DECISION.

08:46:33 25 MR. WONG: THERE YOU GO.

08:46:35 1 THE NEXT ONE, ONE MORE, WE STILL HAVE A LITTLE TIME.

08:46:40 2 MR. NELSON: YOU ARE GOING TO 4793, THAT'S A
08:46:42 3 DEMONSTRATIVE TOO. IT'S JUST THAT, WE PUT TOGETHER FROM THEIR
08:46:46 4 INTERROGATORY RESPONSE, A DEMONSTRATIVE.

08:46:49 5 THE COURT: OH, THAT'S GOOD. THAT ONE, EVEN FROM THE
08:46:52 6 DESCRIPTION, WAS ON SHAKY GROUND.

08:46:53 7 MR. WONG: FOR THIS ONE, YOUR HONOR, I THINK THE
08:46:55 8 INFORMATION IS JUST WRONG. THAT'S THE PROBLEM WITH THIS
08:46:58 9 DEMONSTRATIVE.

08:46:58 10 THE COURT: OKAY. SO WHAT I HAVE BEEN GIVEN IS A
08:47:01 11 DOCUMENT THAT'S INTENDED TO BE A DEMONSTRATIVE, WHICH PURPORTS
08:47:04 12 TO BE A SUMMARY OF AN INTERROGATORY RESPONSE.

08:47:06 13 MR. NELSON: CORRECT.

08:47:07 14 MR. WONG: AND THE PROBLEM IS THAT IT'S INACCURATE.
08:47:09 15 IT LISTS -- WELL, I CAN GIVE A COUPLE OF EXAMPLES.

08:47:12 16 IT LISTS, AS A COUNT FOR COMMAND OVERLAP FOR IBM, ZERO.
08:47:16 17 AND THAT'S NOT CORRECT BECAUSE IBM USES THE SAME CLI AS THE
08:47:21 18 IS-CLI RIGHT BELOW IT. SO THAT'S WRONG.

08:47:24 19 AND THEN IT LISTS --

08:47:25 20 THE COURT: SO ARISTA'S RESPONSE WAS --

08:47:28 21 MR. WONG: I HAVE A COPY OF ARISTA'S RESPONSE HERE.

08:47:31 22 THE COURT: YOU ARE SAYING THIS MISREPRESENTS WHAT
08:47:33 23 ARISTA ACTUALLY RESPONDED?

08:47:34 24 MR. WONG: THAT'S CORRECT.

08:47:36 25 THE COURT: I COULDN'T POSSIBLY GET --

08:47:38 1 MR. NELSON: THAT'S PART OF THE ISSUE WITH THIS,
08:47:41 2 YOUR HONOR.

08:47:41 3 SO WHAT ARISTA DID -- WHAT DR. BLACK DID IS HE TOOK
08:47:46 4 COMPANIES THAT WERE LATER PURCHASED BY OTHER COMPANIES.

08:47:48 5 THE COURT: YEAH.

08:47:48 6 MR. NELSON: SO LIKE, FOR EXAMPLE, WITH NORTEL THEY
08:47:50 7 SHOW UP AT ZERO IN THE INTERROGATORY RESPONSE. THEY WERE LATER
08:47:55 8 PURCHASED FOR AVAYA.

08:47:56 9 SO IN HIS CHART OF 18 THAT HE DOES, HE STICKS NORTEL WITH
08:48:00 10 AVAYA AND REPRESENTS THAT NORTEL ALSO HAD WHATEVER AVAYA HAD,
08:48:04 11 RIGHT, SO THAT'S PRETTY MISLEADING.

08:48:06 12 SO THAT'S ALL THIS DOES IS BREAKS THEM OUT THE WAY THEY
08:48:08 13 DID.

08:48:09 14 THE COURT: OKAY. WELL, SO THAT'S REALLY PRETTY
08:48:11 15 COMPLICATED, AND I WILL JUST COMMENT BECAUSE THIS ISN'T IN THE
08:48:13 16 RECORD, THAT THE INTERROGATORY RESPONSE IS A MIND NUMBING
08:48:18 17 SERIES OF PAGES THAT ARE CHARTS SHOWING COMMANDS AND VENDORS
08:48:23 18 AND ABBREVIATIONS BEYOND THE REALM OF COMPREHENSION BY ME.

08:48:30 19 AND IT'S COMPLETELY INACCESSIBLE TO A LAYPERSON. I NOW
08:48:36 20 HAVE A SUMMARY CHART WHICH IS ACTUALLY -- WITH A BRIEF
08:48:42 21 EXPLANATION, I THINK ONE COULD UNDERSTAND IT. SO THE QUESTION
08:48:44 22 IS, IS IT ACCURATE?

08:48:45 23 MR. WONG: AND I THINK THE ANSWER TO THAT IS NO,
08:48:49 24 YOUR HONOR.

08:48:49 25 FOR ADTRAN AND ENTERASYS/EXTREME, IS-CLI, JUNOS-E,

08:48:55 1 NEXTTOP, PROCKET, AND REDBACK, THEY LIST THAT THEY HAVE NONE OF
08:49:00 2 THE SAME MODES AND PROMPTS. AND WE DISCLOSE IN THE SAME
08:49:05 3 INTERROGATORY RESPONSE, IN A SUPPLEMENT THAT I GUESS THEY
08:49:08 4 DIDN'T READ, IT'S FURTHER DOWN IN THE RESPONSE, THAT ALL THOSE
08:49:12 5 VENDORS HAVE THE EXACT SAME MODES AND PROMPTS.

08:49:14 6 THE COURT: WELL, THIS ISN'T GOING IN UNLESS YOU ALL
08:49:17 7 AGREE IT'S ACCURATE. IT'S NOT BEING USED, THOUGH, YOU CAN'T
08:49:20 8 REPRESENT THIS TO THE JURY, I'M SORRY.

08:49:22 9 MR. NELSON: YOU KNOW, YOUR HONOR, I DON'T WANT TO GO
08:49:24 10 BACK AND FORTH WITH THIS WITH, YOUR HONOR, FOR HOURS. HE CAN
08:49:27 11 JUST GIVE THE TESTIMONY, AND I DON'T NEED IT.

08:49:29 12 THE COURT: GOOD. OKAY.

08:49:31 13 MR. NELSON: HE'S WRONG, BUT I DON'T WANT TO FIGHT
08:49:33 14 ABOUT IT, YOUR HONOR. I'M REALLY TIRED OF FIGHTING, AT THIS
08:49:35 15 POINT, IN TRIAL.

08:49:36 16 THE COURT: I CAN KIND OF TELL FROM THESE LAST DAYS'
08:49:39 17 SERIES OF OBJECTIONS THAT EXHAUSTION HAS SET IN. YOU EXHAUSTED
08:49:45 18 ME A LONG TIME AGO. I KNEW YOUR DAY WOULD COME.

08:49:48 19 MR. NELSON: YOU KNOW ME, YOUR HONOR, I ONLY FIGHT
08:49:50 20 ABOUT WHAT I HAVE TO FIGHT ABOUT.

08:49:51 21 THE COURT: AND I APPRECIATE THAT, MR. NELSON. I
08:49:53 22 AGREE WITH YOU. ALL OF YOU HAVE REALLY DONE A WONDERFUL JOB.

08:49:56 23 MR. WONG, ARE THERE OTHER THINGS ON THIS LIST?

08:49:59 24 MR. WONG: I THINK THE REST WOULD BE SCOPE OBJECTIONS
08:50:01 25 TO THE REPORT, BUT IT DEPENDS ON WHAT DR. ALMEROTH-

08:50:04 1 MR. NELSON: SO 4696, COULD I JUST ADDRESS, THAT'S
08:50:07 2 THE ONE YOU AND I HAVE BEEN TALKING ABOUT FOR A LONG TIME.

08:50:09 3 THE COURT: ARE YOU OBJECTING ON THAT?

08:50:12 4 MR. WONG: WE ARE NOT OBJECTING TO --

08:50:13 5 MR. NELSON: THE ONLY THING HE'S DOING IS PUTTING
08:50:17 6 4697 INTO EVIDENCE, BECAUSE YOUR HONOR, THAT'S WHAT YOU ASKED
08:50:18 7 FOR FOR THE LISTING.

08:50:20 8 MR. WONG: WE ARE OKAY WITH IT.

08:50:21 9 MR. NELSON: OKAY. SO GOOD. THAT ONE IS ALL WORKED
08:50:24 10 OUT.

08:50:24 11 MR. WONG: THAT WAS OVERRULED.

08:50:26 12 THE COURT: OH, THAT'S GREAT.

08:50:28 13 MR. NELSON: AND I DO NOT KNOW IF THERE'S ANYTHING
08:50:30 14 ELSE.

08:50:30 15 THE COURT: SO WHAT HAPPENED WITH THIS ISSUE WITH THE
08:50:34 16 ARGUMENT IN EVIDENCE REGARDING SPECIFIC CISCO PRODUCTS?

08:50:38 17 MR. NELSON: I DON'T KNOW WHAT THAT IS.

08:50:39 18 MR. WONG: OH, THAT'S --

08:50:40 19 THE COURT: THAT'S WHAT MR. VAN NEST HANDED ME TWO
08:50:43 20 DAYS AGO, IT WAS A LITTLE BIT MEATIER AN ISSUE. IS THAT
08:50:47 21 STILL --

08:50:47 22 MR. FERRALL: YOUR HONOR, I THINK THE ISSUE WITH THAT
08:50:50 23 IS WE DON'T ANTICIPATE THAT COMING UP BEFORE, POTENTIALLY,
08:50:54 24 CLOSING ARGUMENTS.

08:50:55 25 THE COURT: OH, YOU WEREN'T ASKING TO STRIKE HIS

08:50:57 1 TESTIMONY?

08:50:58 2 MR. NELSON: NO.

08:50:58 3 MR. FERRALL: WE WERE NOT ASKING TO STRIKE IT.

08:51:00 4 YOUR HONOR RULED.

08:51:02 5 BUT WHAT HAPPENED WAS WE, AT THE SIDEBAR, YOUR HONOR WILL
08:51:05 6 RECALL MR. PAK REPRESENTED THAT THIS WAS ABOUT FAIR USE. AND I
08:51:10 7 SAID TO MYSELF, I DON'T EVER REMEMBER THAT COMING UP IN THEIR
08:51:14 8 INTERROGATORY RESPONSE REGARDING FAIR USE. AND IT DIDN'T.

08:51:17 9 AND SO THAT'S WHAT THIS MOTION PRESENTS. AND WE JUST WANT
08:51:20 10 TO MAKE SURE IT'S NOT A POINT OF ARGUMENT AT THE CLOSINGS.

08:51:24 11 THE COURT: AND JUST BECAUSE I THOUGHT THIS WAS
08:51:27 12 PRETTY INTERESTING, ACTUALLY, SO A SPENT A LITTLE BIT OF TIME
08:51:30 13 ON IT, I'M ALWAYS SO DISAPPOINTED WHEN YOU'VE WORKED THINGS
08:51:33 14 OUT.

08:51:33 15 MR. FERRALL: WE HAVEN'T WORKED THINGS OUT.

08:51:35 16 THE COURT: YOU HAVEN'T WORKED IT OUT.

08:51:37 17 BUT IT WAS VERY HELPFUL THAT YOU GAVE ME BACK THE
08:51:39 18 TRANSCRIPT, BECAUSE IT GOES VERY FAST WHEN WE ARE ON THE
08:51:42 19 RECORD, BUT YOU HAD ASKED ME TO EXCLUDE THE TESTIMONY ON A
08:51:44 20 DIFFERENT BASIS. AND EVEN IN READING THAT, I DIDN'T FEEL THAT
08:51:48 21 THAT WAS PROPER.

08:51:49 22 THE FAIR USE LEFT ME -- IT'S ABSOLUTELY -- THE TESTIMONY
08:51:52 23 WAS RELEVANT TO FAIR USE. BUT NOW THAT YOU'VE GIVEN ME THE
08:51:56 24 RESPONSE TO INTERROGATORY 21, I NEED TO HEAR FROM MR. NELSON
08:52:01 25 ABOUT WHY HE THINKS THAT WAS DISCLOSED, BECAUSE I HAVE GREAT

08:52:06 1 CONCERN THAT IT WAS NOT DISCLOSED.

08:52:08 2 NOW IF YOU WORK THIS OUT THAT YOU ARE NOT AGO GOING TO
08:52:11 3 ARGUE FAIR USE USING THIS TESTIMONY, THEN WE DON'T HAVE A
08:52:15 4 PROBLEM. BUT IF YOU INTENT TO BUILD THAT IN, I WOULD HATE FOR
08:52:19 5 YOU TO SPEND YOUR PRECIOUS HOURS THIS WEEKEND WORKING UP YOUR
08:52:23 6 BEST ARGUMENT THAT I DON'T ALLOW.

08:52:24 7 MR. NELSON: I DON'T INTEND TO DO THAT, YOUR HONOR.

08:52:26 8 SO I'M NOT REALLY SURE WHAT THEY ARE TALKING ABOUT, TO BE
08:52:29 9 HONEST WITH YOU.

08:52:30 10 THE COURT: OKAY.

08:52:30 11 SO FOR MR. KATHAIL, YOU ARE NOT GOING TO ARGUE THAT THE
08:52:37 12 SUBSTANTIALITY REQUIREMENT IN THE THIRD FACTOR, OR THE AFFECT
08:52:43 13 ON MARKET SHARE AND THE FOURTH FACTOR IS AFFECTED BASED UPON
08:52:47 14 THIS EVIDENCE THAT MR. KATHAIL GAVE ABOUT THE OVERLAPPING
08:52:53 15 COPYRIGHT PROTECTABLE ELEMENTS IN THE -- WAS IT NEXUS 7000
08:52:58 16 PRODUCT?

08:52:58 17 MR. NELSON: I HAVE PLENTY OF TESTIMONY THAT THEY
08:53:01 18 TOOK WHAT THEY NEEDED, YOUR HONOR. AND THAT'S REALLY WHAT THE
08:53:03 19 POINT IS.

08:53:03 20 THE COURT: AT THAT HIGHER LEVEL, THAT'S FINE.
08:53:06 21 THAT'S HOW YOU DISCLOSED IT IN THE INTERROGATORY RESPONSE.
08:53:08 22 THAT'S NOT THE OBJECTION.

08:53:09 23 MR. FERRALL: CORRECT.

08:53:10 24 THE COURT: WELL, IT SOUNDS LIKE WE'VE WORKED THROUGH
08:53:12 25 THAT THEN.

08:53:13 1 MR. NELSON: YEAH. SO THAT ISN'T AN ISSUE.

08:53:15 2 ON THE SLIDES, I DON'T KNOW. I HAVE AN OUTLINE, BELIEVE
08:53:22 3 IT OR NOT, I KNOW THAT YOU MIGHT NOT THINK THAT I DO --

08:53:25 4 THE COURT: YOU KNOW, I KNOW THAT EVERYTHING THAT YOU
08:53:27 5 DO HAS BEEN THOUGHT OUT VERY THOROUGHLY, MR. NELSON, I NEVER
08:53:33 6 DOUBT THAT.

08:53:33 7 MR. NELSON: THE ONLY SLIDE I HAVE IS SLIDE 17 WHICH
08:53:36 8 IS JUST THE DATES FROM THE EOS MANUALS ON WHEN THE VARIOUS
08:53:41 9 VERSIONS OF THE OPERATING SYSTEM WERE LISTED.

08:53:45 10 MR. WONG: IS IT JUST ONE SLIDE YOU ARE USING?

08:53:47 11 MR. NELSON: THAT'S ALL IT IS IN MY OUTLINE.

08:53:51 12 THE COURT: UNTIL MS. JENKINS HANDS YOU UP HERE THAT
08:53:55 13 SAYS HERE, DO THIS.

08:53:58 14 MR. NELSON: NO, I'M TALKING ABOUT THE ONES WE ARE
08:54:01 15 OBJECTING TO. WE DON'T NEED TO TALK ABOUT THE OTHER ONES.

08:54:04 16 THE COURT: I DON'T CARE ABOUT THE OTHERS. IF YOU
08:54:06 17 ARE OBJECTING TO THEM, I'M JUST IN THE AUDIENCE HERE.

08:54:10 18 MR. WONG: SO WE HAVEN'T GOTTEN A REVISED SLIDE DECK
08:54:13 19 ON THAT. SO UNTIL I SEE THAT, I DON'T KNOW WHAT WE ARE
08:54:15 20 OBJECTING TO OR WHAT'S LEFT.

08:54:17 21 MR. NELSON: 17 WAS THE ONE WITH THE DATES.

08:54:18 22 MR. WONG: RIGHT. IS THAT THE ONLY SLIDE THAT'S
08:54:21 23 GOING TO BE USED?

08:54:22 24 MR. NELSON: THE ONES YOU ARE OBJECTING TO.

08:54:23 25 MR. WONG: I THINK THERE MIGHT HAVE BEEN CONFUSION TO

08:54:26 1 WHICH ONES WE WERE OBJECTING TO BECAUSE THERE WAS AN E-MAIL
08:54:29 2 SENT THREE MINUTES BEFORE YOU RESPONDED, SO I WANT TO SEE THE
08:54:32 3 ACTUAL SLIDE DECK, THAT'S ALL I WANT TO SEE --

08:54:36 4 MR. NELSON: OKAY. WE CAN WORRY ABOUT THAT ONE, I
08:54:38 5 GUESS LATER, YOUR HONOR.

08:54:39 6 MR. WONG: YEAH.

08:54:40 7 MR. NELSON: THE ONLY -- CAN I JUST GET A LITTLE BIT
08:54:44 8 CLARIFICATION ON THIS REBUTTAL ISSUE, BECAUSE -- SO I DIDN'T
08:54:49 9 UNDERSTAND EXACTLY, AND I'M SORRY.

08:54:51 10 THE COURT: WELL, I WAS ONLY ASKED TO CONSIDER
08:54:54 11 WHETHER MR. SWEENEY'S TESTIMONY --

08:54:55 12 MR. NELSON: AGREED. BUT I'M TALKING ABOUT MORE
08:54:58 13 BROADLY.

08:55:01 14 ARE YOU SAYING THAT REBUTTAL FOR US WOULD BE LIMITED TO
08:55:04 15 THE FAIR USE CASE?

08:55:06 16 THE COURT: MY RECOLLECTION, AND YOU STUDY MY ORDERS
08:55:10 17 MORE THAN I DO, WHICH IS GOOD, BUT MY RECOLLECTION OF THIS
08:55:13 18 ENTIRE DISCUSSION AT THE PRETRIAL CONFERENCE WAS THAT I WAS
08:55:16 19 ALLOWING REBUTTAL FOR ARISTA ON THE ISSUES ON ITS AFFIRMATIVE
08:55:23 20 DEFENSES WHERE IT CARRIED THE BURDEN OF PROOF.

08:55:25 21 MR. NELSON: RIGHT.

08:55:25 22 THE COURT: AND IT WAS PRETTY SIMPLE, I THOUGHT. AND
08:55:28 23 SO FAIR USE, SCÈNES À FAIRE, MERGER, THEY CARRY THE BURDEN OF
08:55:33 24 PROOF.

08:55:33 25 MR. NELSON: RIGHT.

08:55:34 1 SO THAT'S WHAT I'M ASKING. SO THEN I WOULD GET

08:55:37 2 REBUTTAL --

08:55:37 3 THE COURT: AND I SUPPOSE ON THEIR DAMAGES AS WELL,
08:55:39 4 ON DISGORGEMENT, THEY CARRY THE BURDEN OF PROOF ON THE
08:55:42 5 DEDUCTIONS.

08:55:43 6 MR. NELSON: SURE, MAKES SENSE.

08:55:45 7 THE COURT: MR. VAN NEST, THOSE WERE THE AREAS THAT
08:55:47 8 YOU UNDERSTOOD YOU --

08:55:48 9 MR. VAN NEST: THAT'S WHAT I UNDERSTOOD FOR THE
08:55:51 10 SURREBUTTAL, WHAT I CALL SURREBUTTAL FOR ARISTA.

08:55:53 11 THE COURT: YES, IT PROBABLY TECHNICALLY IS
08:55:55 12 SURREBUTTAL, BUT YEAH.

08:55:59 13 MR. VAN NEST: I UNDERSTOOD THAT.

08:56:00 14 MR. NELSON: SO THEN I STILL GET REBUTTAL ON THE
08:56:03 15 THINGS WHERE I CARRY THE BURDEN.

08:56:03 16 THE COURT: OH, ABSOLUTELY.

08:56:05 17 MR. NELSON: SO DR. ALMEROOTH CAN RESPOND TO THINGS
08:56:08 18 THAT DR. BLACK SAID.

08:56:09 19 THE COURT: SURE. OH, ABSOLUTELY.

08:56:09 20 MR. NELSON: SO I JUST WANTED TO BE CLEAR ON THAT.

08:56:10 21 THE COURT: NO, I'M NOT KNEE CAPPING YOU THIS
08:56:12 22 MORNING.

08:56:13 23 MR. NELSON: NO, NO, NO, THAT'S ALL FINE. I WAS A
08:56:16 24 LITTLE BIT CONFUSED.

08:56:18 25 THE COURT: I'M SORRY, I WAS UNCLEAR.

08:56:19 1 MR. NELSON: OKAY. THANK YOU. I APPRECIATE IT,
08:56:21 2 YOUR HONOR.

08:56:21 3 THE COURT: ALL RIGHT. IS THAT EVERYTHING?

08:56:23 4 MR. NELSON: YES.

08:56:25 5 MR. VAN NEST: I THINK WE ARE ALL SET, YOUR HONOR.

08:56:29 6 THE COURT: WE HAVE FOUR MINUTES TO SPARE.

09:02:48 7 (JURY IN AT 9:02 A.M.)

09:02:51 8 THE COURT: PLEASE BE SEATED, EVERYONE. WE ARE BACK
09:03:49 9 ON THE RECORD. GOOD MORNING, LADIES AND GENTLEMEN.

09:03:51 10 WE ARE GOING TO GET RIGHT DOWN TO BUSINESS HERE WITH THE
09:03:55 11 PRESENTATION OF EVIDENCE AND MOVE RIGHT ALONG.

09:03:58 12 SO I BELIEVE THAT MS. ELSTEN WAS ON THE WITNESS STAND WHEN
09:04:01 13 WE CONCLUDED, MR. SILBERT?

09:04:03 14 MR. SILBERT: CORRECT. AND I HAD COMPLETED MY
09:04:06 15 EXAMINATION.

09:04:06 16 THE COURT: ALL RIGHT.

09:04:07 17 MS. ELSTEN, IF YOU WOULD COME BACK UP TO THE WITNESS
09:04:10 18 STAND, PLEASE, AND I WILL HAVE YOU STAND TO BE SWORN FOR A NEW
09:04:13 19 COURT DAY.

09:04:14 20 **(DEFENDANT'S WITNESS, CATE ELSTEN, WAS SWORN.)**

09:04:15 21 THE WITNESS: YES.

09:04:42 22 **CROSS-EXAMINATION**

09:04:44 23 BY MR. PAK: GOOD MORNING, MS. ELSTEN.

09:04:45 24 A. GOOD MORNING.

09:04:45 25 Q. I THINK YOU PROBABLY HAVE THE BINDERS OF YOUR DEPOSITION

09:04:48 1 TRANSCRIPT IN FRONT OF YOU.

09:04:59 2 MS. ELSTEN, YOU'VE PREPARED EXPERT REPORTS IN THIS CASE,
09:05:03 3 CORRECT?

09:05:03 4 A. CORRECT.

09:05:03 5 Q. AND IN THOSE REPORTS, YOU SET FORTH FULL AND COMPLETE
09:05:07 6 BASIS AND OPINIONS RELATING TO DAMAGES IN THIS CASE, CORRECT?

09:05:10 7 A. YES. CERTAINLY, I'VE LEARNED THINGS SINCE THE TIME THE
09:05:15 8 REPORTS WERE FILED, BUT I DON'T THINK THEY HAD ANY MATERIAL, IN
09:05:20 9 FACT, I DON'T KNOW THEY DIDN'T.

09:05:23 10 Q. IN FACT, THE ECONOMIC ANALYSIS YOU PORTRAYED TO THE JURY,
09:05:27 11 THAT WAS BASED ON AND DISCLOSED IN YOUR EXPORT REPORTS,
09:05:29 12 CORRECT?

09:05:29 13 A. I THINK EVERYTHING WAS, YEAH.

09:05:31 14 Q. AND YOU DIDN'T CHANGE YOUR NUMBERS OR YOU DIDN'T CHANGE
09:05:34 15 HOW YOU APPROACH CUSTOMER ANALYSIS BASED ON ANYTHING THAT'S NOT
09:05:39 16 IN THE EXPERT REPORTS, CORRECT?

09:05:41 17 A. NO.

09:05:41 18 Q. AND ALSO, YOU TESTIFIED ON DIRECT THAT YOU VIEW YOURSELF
09:05:45 19 AS AN INDEPENDENT OR NEUTRAL EXPERT IN THIS CASE, ALTHOUGH YOU
09:05:48 20 WERE HIRED BY ARISTA; IS THAT TRUE?

09:05:51 21 A. YES.

09:05:51 22 Q. AND I BELIEVE YOU SAID YOU WERE TRYING TO BE AS NEUTRAL AS
09:05:54 23 POSSIBLE IN FORMING YOUR OPINIONS IN THIS CASE, CORRECT?

09:05:56 24 A. YES.

09:05:56 25 Q. AND YOU LOOKED AT ALL THE EVIDENCE AND YOU WANTED TO MAKE

09:06:00 1 SURE THAT YOU HAD A 360-DEGREE VIEW OF THAT EVIDENCE BEFORE YOU
09:06:04 2 FORMED YOUR OPINION?

09:06:05 3 A. THAT'S CERTAINLY WHAT I TRIED TO DO.

09:06:08 4 Q. AND I THINK ONE OF THE THINGS YOU SAID IS THAT YOU LOOKED
09:06:11 5 AT A LOT OF DOCUMENTS, YOU MAY HAVE LOOKED AT AS MANY AS SIX
09:06:16 6 TIMES OF THE DOCUMENTS AS DR. CHEVALIER?

09:06:19 7 A. BASED ON MY REPORTS, YES.

09:06:20 8 Q. YOU KNOW THERE HAVE BEEN THOUSANDS, IF NOT MILLIONS PAGES
09:06:25 9 OF DOCUMENTS PRODUCED IN THIS CASE?

09:06:26 10 A. YES.

09:06:26 11 Q. AND JUST TO BE CLEAR, YOU ARE NOT HERE TO ARGUE ON BEHALF
09:06:29 12 OF ARISTA, THAT'S NOT YOUR ROLE, CORRECT?

09:06:31 13 A. CORRECT.

09:06:32 14 Q. LET ME SHOW YOU -- WERE YOU INFORMED ABOUT THE LAW OF
09:06:37 15 COPYRIGHT INFRINGEMENT IN FORMING YOUR OPINIONS?

09:06:39 16 A. WAS I INFORMED? PARTICULAR TO THIS CASE?

09:06:43 17 Q. CORRECT:

09:06:46 18 A. I DON'T THINK SO. IT'S SOMETHING THAT I'M FAMILIAR WITH
09:06:49 19 AS PART OF THE WORK THAT I DO.

09:06:50 20 Q. YOU'VE DONE A LOT OF COPYRIGHT CASES, CORRECT?

09:06:54 21 A. FAIR AMOUNT, YEAH.

09:06:55 22 Q. SO YOU KNOW THE STATUTE AND YOU UNDERSTAND WHAT'S COVERED
09:06:58 23 BY COPYRIGHT INFRINGEMENT?

09:07:00 24 A. WELL, I UNDERSTAND THE DAMAGES PART OF THE STATUTE, OR AT
09:07:03 25 LEAST I ENDEAVOR TO. AS YOU KNOW, CASE LAW CHANGES IT ALL THE

09:07:07 1 TIME. I WOULDN'T CLAIM TO BE A LEGAL EXPERT IN OTHER ASPECTS
09:07:12 2 OF COPYRIGHT LAW.

09:07:13 3 Q. YOU UNDERSTAND THAT AS A DAMAGES EXPERT, YOU ARE ASKED TO
09:07:16 4 ASSUME COPYRIGHT INFRINGEMENT?

09:07:17 5 A. YES.

09:07:18 6 Q. SO LET'S TAKE A LOOK AT SLIDE 2.

09:07:26 7 WHAT I'VE SHOWN YOU HERE IS A SECTION OUT OF THE COPYRIGHT
09:07:31 8 STATUTE, AND IT STATES THAT, "THE OWNER OF COPYRIGHT, UNDER
09:07:35 9 THIS TITLE, HAS THE EXCLUSIVE RIGHTS TO DO AND AUTHORIZE ANY OF
09:07:39 10 THE FOLLOWING."

09:07:40 11 DO YOU SEE THAT?

09:07:42 12 A. I DO.

09:07:42 13 Q. SO YOU UNDERSTAND THAT A COPYRIGHT IS A RIGHT TO EXCLUDE
09:07:46 14 OTHER PEOPLE FROM ENGAGING IN CERTAIN ACTIVITIES RELATED TO THE
09:07:49 15 COPYRIGHTED WORK, CORRECT?

09:07:50 16 A. WELL, WITHIN LIMITS.

09:07:51 17 Q. WITHIN LIMITS, BUT CERTAINLY THESE ARE WITHIN THE POWER OF
09:07:55 18 THE COPYRIGHT OWNER TO EXCLUDE CERTAIN ACTIVITIES WITHIN THE
09:07:58 19 LIMITS?

09:07:59 20 A. YES. MY UNDERSTANDING IS THAT THAT POWER ISN'T ABSOLUTE,
09:08:04 21 AND THERE'S SOME CONDITIONS THAT ARE PUT ON IT, BUT THIS IS
09:08:08 22 WHERE THE STATUTE STARTS FOR SURE.

09:08:10 23 Q. AND ONE OF THE RIGHTS THAT A COPYRIGHT OWNER HAS IS THE
09:08:14 24 RIGHT TO EXCLUDE OTHERS FROM REPRODUCING THE COPYRIGHTED WORK,
09:08:16 25 CORRECT?

09:08:16 1 A. AGAIN, WITHIN LIMITS.

09:08:18 2 Q. AND THE RIGHT TO EXCLUDE OTHERS FROM REPRODUCING THE
09:08:21 3 COPYRIGHTED WORK INCLUDES THE RIGHT TO EXCLUDE REPRODUCTIONS,
09:08:25 4 WHETHER IT'S IN PAPER FORM OR IT'S IN DIGITAL FORM, CORRECT?

09:08:30 5 A. WELL, YOU ARE KIND OF GETTING INTO THE LEGAL STUFF, BUT
09:08:33 6 THAT'S MY UNDERSTANDING, YEAH.

09:08:35 7 Q. AND SO FOR EXAMPLE, WITH THE ASSUMPTION THAT THE USE BY
09:08:40 8 ARISTA OF CISCO'S COPYRIGHTED CLI IS AN INFRINGEMENT, YOU WOULD
09:08:46 9 AGREE THAT WHEN A USER SITS IN FRONT OF A SYSTEM TERMINAL
09:08:50 10 RUNNING AN ARISTA SWITCH AND TYPES IN THE COMMANDS THAT ARE AT
09:08:53 11 ISSUE IN THIS CASE, THAT THAT WOULD BE AN ACT OF INFRINGEMENT,
09:08:56 12 CORRECT?

09:08:57 13 MR. SILBERT: OBJECTION. CALLS FOR A LEGAL
09:08:59 14 CONCLUSION.

09:08:59 15 THE COURT: SUSTAINED.

09:09:00 16 BY MR. PAK:

09:09:01 17 Q. LET ME SHOW YOU THIS SLIDE. SO MY QUESTION GOES TO THIS.
09:09:06 18 YOU WOULD AGREE WITH ME THAT YOU'VE HEARD TESTIMONY IN
09:09:11 19 THIS CASE THAT AUTOMATION CUSTOMERS ACTUALLY USE THE CLI
09:09:16 20 COMMANDS AT ISSUE IN THIS CASE AS PART OF THOSE AUTOMATION
09:09:19 21 TOOLS.

09:09:20 22 YOU'VE HEARD THAT TESTIMONY, CORRECT?

09:09:22 23 A. CAN I HEAR THAT AGAIN?

09:09:23 24 Q. SURE.

09:09:24 25 YOU'VE HEARD TESTIMONY IN THIS CASE THAT AUTOMATION

09:09:27 1 CUSTOMERS OF ARISTA'S USE THE CLI COMMANDS AT ISSUE IN THIS
09:09:33 2 CASE AS PART OF AUTOMATION TOOLS?

09:09:36 3 A. SOMETIMES.

09:09:37 4 Q. YOU'VE HEARD THAT TESTIMONY FROM MR. SUMMERS, CORRECT?
09:09:40 5 WITH RESPECT TO MICROSOFT?

09:09:41 6 A. WELL, I DID HEAR MR. SUMMERS' TESTIMONY, YEAH.

09:09:44 7 Q. SO YOU ARE NOT DENYING THAT, CORRECT?

09:09:47 8 A. THAT IT'S USED SOMETIMES? NO.

09:09:51 9 Q. YOU UNDERSTAND, FOR EXAMPLE, THAT CLI COMMANDS CAN BE PUT
09:09:54 10 INTO SCRIPTS WHICH ARE PART OF AUTOMATION TOOLS THAT ARE USED
09:09:57 11 BY ARISTA'S CUSTOMERS, CORRECT?

09:09:59 12 A. CORRECT.

09:09:59 13 Q. AND DO YOU HAVE AN UNDERSTANDING OF WHAT A SCRIPT IS?

09:10:03 14 A. WELL, A LAYMAN'S UNDERSTANDING.

09:10:05 15 Q. WHAT IS YOUR LAYMAN'S UNDERSTANDING OF A SCRIPT?

09:10:07 16 A. ESSENTIALLY, A SCRIPT IS A SET OF INSTRUCTIONS THAT'S
09:10:14 17 WRITTEN INTO THE PROGRAM THAT CAUSES SOME FUNCTION TO RUN
09:10:19 18 AUTOMATICALLY.

09:10:20 19 IN OTHER WORDS, WITHOUT HUMAN -- WITHOUT ADDITIONAL HUMAN
09:10:23 20 INTERVENTION.

09:10:24 21 Q. AND YOU UNDERSTAND THAT WHAT ARISTA'S CUSTOMERS DO, OFTEN
09:10:28 22 TIMES, IS TO PUT CLI COMMANDS INTO THOSE SCRIPTS.

09:10:31 23 YOU UNDERSTAND THAT, CORRECT?

09:10:33 24 A. I DON'T KNOW IF I WOULD PUT IT THAT WAY, BUT I WOULD TRUST
09:10:37 25 YOU ON IT.

09:10:38 1 YOU KNOW, I WOULD SAY THE COMMANDS ARE USED TO WRITE THE
09:10:42 2 SCRIPT SOMETIMES AND THEN TO EXECUTE THE SCRIPT. BUT AGAIN,
09:10:45 3 YOU'RE GETTING BEYOND MY AREA OF EXPERTISE. I ONLY HAVE A
09:10:49 4 GENERAL UNDERSTANDING OF THAT.

09:10:50 5 Q. DO YOU BELIEVE THAT WHEN THESE AUTOMATION TOOLS ARE USED
09:10:53 6 BY ARISTA'S CUSTOMERS, THAT CLI COMMANDS ARE ISSUED? DO YOU
09:10:58 7 BELIEVE THAT OR NOT?

09:10:59 8 A. ARE ISSUED?

09:11:01 9 Q. YES.

09:11:01 10 A. I DON'T KNOW WHAT YOU MEAN BY THAT.

09:11:03 11 Q. ARE USED.

09:11:04 12 A. ARE USED? OKAY. SO WHEN AUTOMATED SCRIPTS ARE RUN, ARE
09:11:07 13 THE CLI COMMANDS USED? WELL, MY UNDERSTANDING IS YES, BUT I
09:11:14 14 DON'T KNOW THAT A TECHNICAL PERSON WOULD ANSWER THAT QUESTION
09:11:18 15 THE SAME WAY.

09:11:18 16 Q. YOU USED THAT ASSUMPTION IN FORMING SOME OF THE OPINIONS
09:11:22 17 IN THIS CASE; IS THAT CORRECT?

09:11:23 18 A. NOT DIRECTLY.

09:11:25 19 Q. LET'S SEE WHAT WE ARE TALKING ABOUT HERE.

09:11:30 20 SO YOU UNDERSTAND THAT IF A USER PUTS A CLI COMMAND INTO A
09:11:34 21 SCRIPT OR AN AUTOMATION TOOL OF SOME KIND, THAT THE PROCESS OF
09:11:39 22 USING THOSE CLI COMMANDS BECOME AUTOMATED, CORRECT?

09:11:43 23 A. YEAH, I GUESS THAT'S CONSISTENT WITH MY UNDERSTANDING.

09:11:46 24 Q. AND YOU UNDERSTAND THAT ESPECIALLY FOR DATA CENTER
09:11:50 25 CUSTOMERS WHO YOU'VE LABELED AS HIGHLY AUTOMATED CUSTOMERS,

09:11:53 1 THAT THE SAME SCRIPT CAN BE USED TO TALK TO THOUSANDS OF
09:11:57 2 MACHINES ACROSS THE WORLD, YOU UNDERSTAND THAT; RIGHT?

09:12:01 3 A. WELL, IN SOME CASES, IT DEPENDS ON THE CUSTOMER.

09:12:04 4 Q. FOR EXAMPLE, MICROSOFT, FACEBOOK, GOOGLE, THESE LARGE
09:12:07 5 CLOUD COMPUTING CUSTOMERS, WHEN THEY AUTOMATE, THE SAME SCRIPT
09:12:11 6 CAN BE USED TO TALK TO MANY, MANY MACHINES; YOU UNDERSTAND
09:12:14 7 THAT, RIGHT?

09:12:14 8 A. OH, YEAH. I THINK THAT'S THE POINT, YEAH.

09:12:18 9 Q. YEAH. THAT'S THE POINT OF USING THE SCRIPT IS THAT YOU
09:12:21 10 CAN TAKE THE SAME SET OF COMMANDS OR INSTRUCTIONS THAT ARE IN
09:12:23 11 THE SCRIPT TO TALK TO MANY, MANY MACHINES AUTOMATICALLY WITHOUT
09:12:29 12 HUMAN INTERVENTION, CORRECT?

09:12:30 13 A. WELL, THERE ARE A COUPLE OF QUESTIONS IN THERE.

09:12:33 14 I THINK BEING ABLE TO TALK TO A LOT OF NETWORKS IS PART OF
09:12:39 15 THE POINT. THE OTHER PART OF THE POINT IS TO LOWER THE
09:12:45 16 REQUIRED MAINTENANCE.

09:12:46 17 Q. OKAY. LET ME ADDRESS THE FIRST POINT.

09:12:48 18 YOU AGREE WITH ME THAT WHEN HIGHLY AUTOMATED CUSTOMERS USE
09:12:53 19 SCRIPTS, THEY USE SCRIPTS THAT TALK TO MANY MACHINES, YOU AGREE
09:12:56 20 WITH THAT?

09:12:57 21 A. WELL, I THINK TYPICALLY THAT'S THE CASE. I DON'T KNOW IF
09:12:59 22 IT'S ALWAYS THE CASE, BUT I THINK TYPICALLY IT IS.

09:13:02 23 Q. AND TYPICALLY, THOSE AUTOMATED SCRIPTS CAN RUN
09:13:06 24 AUTOMATICALLY WITHOUT HUMAN INTERVENTION. YOU AGREE WITH THAT,
09:13:10 25 CORRECT? THAT'S THE POINT OF AUTOMATION?

09:13:12 1 A. YOU MEAN THE SCRIPT ITSELF CAN RUN WITH THAT?

09:13:16 2 Q. YES.

09:13:17 3 A. YEAH, SURE. I MEAN, FOR WHAT THE PARAMETERS OF THE
09:13:20 4 AUTOMATION ARE, IT IS SUPPOSED -- ONCE YOU START THE PROGRAM,
09:13:24 5 IT'S SUPPOSED TO RUN TO COMPLETION.

09:13:25 6 Q. AND SO YOU UNDERSTAND THAT WHEN YOU HAVE AUTOMATION, THAT
09:13:28 7 YOU CAN SET A SCHEDULE BY WHICH SCRIPTS CAN BE ISSUED
09:13:33 8 AUTOMATICALLY AT REGULARLY SCHEDULED TIMES; YOU UNDERSTAND THAT
09:13:35 9 THAT'S PART OF AUTOMATION?

09:13:36 10 A. OKAY. AND I HATE TO ASK YOU TO READ THIS, BUT THIS IS NOT
09:13:43 11 PART OF WHAT I DEALT WITH DIRECTLY, SO COULD I HEAR THAT
09:13:46 12 QUESTION AGAIN?

09:13:46 13 Q. SURE. YOU UNDERSTAND THAT WITH AUTOMATION, ONE OF THE
09:13:50 14 THINGS YOU CAN DO IS TO ISSUE SCRIPTS ON A REGULAR BASIS TO
09:13:53 15 LOTS OF MACHINES WITHOUT HUMAN INTERVENTION; YOU UNDERSTAND
09:13:56 16 THAT?

09:13:57 17 A. IF I UNDERSTAND YOUR QUESTION CORRECTLY, YES.

09:14:01 18 Q. FOR EXAMPLE, A SYSTEM ADMINISTRATOR MIGHT SAY, I WANT THIS
09:14:04 19 SCRIPT TO GO OUT TO A THOUSAND MACHINES EVERY DAY AS PART OF A
09:14:08 20 MAINTENANCE PROGRAM; YOU UNDERSTAND THAT?

09:14:10 21 A. THAT'S NOT INCONSISTENT WITH MY UNDERSTANDING.

09:14:15 22 Q. SO ISN'T IT TRUE THAT IF SCRIPTS USE CLI COMMANDS, THAT IN
09:14:21 23 AN AUTOMATED ENVIRONMENT, THE USAGE OF THE CLI COMMANDS AT
09:14:24 24 ISSUE WOULD ACTUALLY MULTIPLY IN AN AUTOMATED SITUATION,
09:14:31 25 CORRECT?

09:14:31 1 A. WHAT DO YOU MEAN? BY MULTIPLY, DO YOU MEAN BEING USED BY
09:14:36 2 MANY DATA CENTERS, MANY SWITCHES?

09:14:40 3 Q. CORRECT.

09:14:41 4 A. WELL, YOU KNOW, I THINK FOR SOME CUSTOMERS, IN FACT, MAYBE
09:14:46 5 MOST OF THE HIGHLY AUTOMATED CUSTOMERS, THAT'S TRUE. I DON'T
09:14:50 6 KNOW IF THAT'S ALWAYS THE GOAL, THOUGH. I THINK THAT'S ONLY
09:14:56 7 ONE OF THE GOALS OF AUTOMATION. SO I DON'T KNOW IF IT'S ALWAYS
09:14:59 8 THE CASE.

09:15:00 9 Q. SO MS. ELSTEN, THIS IS AN IMPORTANT QUESTION BECAUSE IF I
09:15:03 10 REMEMBER YOUR TESTIMONY, ONE OF THE THINGS YOU DID IS YOU
09:15:06 11 STRUCK OFF THE LIST ALL OF THE AUTOMATED CUSTOMERS AS PART OF
09:15:12 12 THE LOST PROFITS ANALYSIS; DO YOU RECALL DOING THAT?

09:15:15 13 A. ALL THE AUTOMATED CUSTOMERS? NO.

09:15:18 14 Q. YOU STRUCK OFF CUSTOMERS THAT YOU CALLED HIGHLY AUTOMATED
09:15:22 15 CUSTOMERS, SUCH AS MICROSOFT, GOOGLE, FACEBOOK, FROM YOUR LOST
09:15:28 16 PROFITS CALCULATIONS; DO YOU RECALL THAT?

09:15:29 17 A. OKAY. SO THE HIGHLY AUTOMATED PART WAS NOT THE CRITERIA
09:15:33 18 FOR LOST PROFITS, THAT WAS PART OF THE DISGORGEMENT ANALYSIS.
09:15:37 19 WHAT WE STRUCK OFF THE LIST -- LET'S TAKE IT FROM
09:15:46 20 DR. CHEVALIER'S REPORT.

09:15:47 21 IN THE LOST PROFITS CALCULATION, WE START OFF WITH WHAT WE
09:15:50 22 CALL CLOUD CUSTOMERS, THOSE DON'T TEND TO BE HIGHLY AUTOMATED
09:15:54 23 CUSTOMERS, BUT THE AUTOMATION WASN'T THE CRITERIA IN THE LOST
09:15:57 24 PROFITS ANALYSIS.

09:15:58 25 Q. BUT YOU STRUCK THOSE CLOUD COMPUTING CUSTOMERS WHO -- MANY

09:16:02 1 OF WHOM YOU AGREE ARE HIGHLY AUTOMATED, COMPLETELY OUT OF YOUR
09:16:08 2 LOST PROFITS CALCULATION, CORRECT?

09:16:10 3 A. YES.

09:16:10 4 Q. OKAY. SO EVERY CUSTOMER THAT YOU BELIEVE IS A CLOUD
09:16:13 5 COMPUTING CUSTOMER OF ARISTA'S, YOU TOOK THOSE CUSTOMERS OUT OF
09:16:18 6 YOUR LOST PROFITS CALCULATION, CORRECT?

09:16:19 7 A. WELL, WE TOOK THOSE CUSTOMERS OUT BECAUSE OF THE CASE
09:16:22 8 STUDIES WE DID ON THEM. THERE IS A GROUP OF THEM THAT CAN BE
09:16:26 9 DESCRIBED AS CLOUD CUSTOMERS.

09:16:28 10 Q. BUT NOW, THIS IS THE IMPORTANT PART, MS. ELSTEN.
09:16:33 11 WHEN YOU WERE FORMING YOUR OPINIONS IN THIS CASE BEFORE
09:16:35 12 YOUR DEPOSITION, YOU HAD NOT TAKEN INTO CONSIDERATION THAT
09:16:41 13 CONFIGURATION FILES ARE OFTEN SPECIFIED USING CLI COMMANDS;
09:16:49 14 ISN'T THAT TRUE?

09:16:49 15 A. GENERALLY, I DID, NOT AS SPECIFICALLY.

09:16:53 16 AGAIN, AS YOU ARE ASKING THE QUESTION, BECAUSE THAT'S MORE
09:16:55 17 TECHNICAL THAN WHAT I WAS LOOKING AT. BUT AGAIN, IF I
09:17:00 18 UNDERSTAND YOUR QUESTION, YEAH, THAT WAS THE PART OF MY
09:17:03 19 UNDERSTANDING.

09:17:07 20 Q. LET'S TAKE A LOOK AT YOUR DEPOSITION TRANSCRIPT AT
09:17:11 21 PAGE 128, LINE 23, TO PAGE 129, LINE 3.

09:17:17 22 A. WHAT LINE ARE WE STARTING AT?

09:17:20 23 Q. PAGE 128, LINE 23, TO PAGE 129 LINE 3.

09:17:26 24 YOUR HONOR, MAY I PLAY THE CLIP?

09:17:28 25 THE COURT: YES, PLEASE. GO AHEAD.

(THE VIDEO DEPOSITION OF CATE ELSTEN WAS PLAYED INTO THE RECORD.)

Q. MS. ELSTEN, LET'S TALK SPECIFICALLY ABOUT SOME OF THE HIGHLY AUTOMATED CLOUD COMPUTING CUSTOMERS THAT YOU STRUCK OFF THE LIST.

LET'S BEGIN, FOR EXAMPLE, WITH -- WELL, MICROSOFT AND FACEBOOK ARE TWO OF THOSE CUSTOMERS, CORRECT?

A. YES.

Q. THAT YOU DID NOT INCLUDE IN YOUR LOST PROFITS CALCULATIONS?

A. CORRECT, CORRECT.

Q. AND IN FORMING YOUR OPINIONS ABOUT THIS CATEGORY OF CUSTOMERS, YOU ASSUMED IN YOUR EXPERT REPORT THAT THESE HIGHLY AUTOMATED CUSTOMERS DO NOT USE THE ARISTA EOS CLI FOR CONFIGURATION OR DAY-TO-DAY MANAGEMENT OF THEIR NETWORK SWITCHES, CORRECT?

A. CONFIGURATION OR DAY-TO-DAY MANAGEMENT? AND YOU SAID I ASSUME THEY DON'T USE CLI COMMANDS?

Q. THEY DON'T USE CLI FOR THAT, CORRECT.

A. FOR THESE PARTICULAR CUSTOMERS, OR THESE CUSTOMERS IN GENERALITY?

Q. CUSTOMERS IN GENERAL.

ISN'T IT TRUE THAT FOR ALL THE HIGHLY AUTOMATED CUSTOMERS, IN YOUR EXPERT REPORT, YOU ASSUMED THAT THEY DO NOT USE THE ARISTA EOS CLI FOR CONFIGURATION OR DAY-TO-DAY MANAGEMENT OF

09:19:05 1 THEIR NETWORK SWITCHES; THAT WAS THE ASSUMPTION, CORRECT?

09:19:07 2 A. WELL, I THINK IT WOULD BE MORE ACCURATE TO SAY I ASSUME
09:19:11 3 THEIR HUMAN OPERATORS DON'T.

09:19:14 4 Q. IF WE COULD TAKE A LOOK AT PAGE 69 OF YOUR EXPERT REPORT.
09:19:30 5 AND THIS IS IN YOUR REBUTTAL EXPERT REPORT.

09:19:33 6 A. THIS IS THE BLUE ONE?

09:19:35 7 Q. YES.

09:19:35 8 A. THE ONE WITH THE BLUE COVER.

09:19:38 9 MR. PAK: AND MR. FISHER, IF WE COULD HAVE THAT ON
09:19:41 10 THE SCREEN, PAGE 69 OF MS. ELSTEN'S REBUTTAL EXPERT REPORT.

09:20:05 11 Q. AT THE VERY BEGINNING, AT THE VERY TOP OF THAT PAGE, WHAT
09:20:30 12 YOU STATE IN YOUR REPORT IN FORMING YOUR DAMAGES OPINIONS WAS
09:20:34 13 THE FOLLOWING: "I UNDERSTAND MANY OF ARISTA'S LARGER CUSTOMERS
09:20:38 14 DO NOT USE THE ARISTA EOS CLI FOR CONFIGURATION OR DAY-TO-DAY
09:20:44 15 MANAGEMENT OF THEIR NETWORK SWITCHES."

09:20:46 16 DO YOU SEE THAT STATEMENT?

09:20:48 17 A. I DO.

09:20:48 18 Q. AND THEN YOU LISTED SOME OF THESE COMPANIES, AND THEY
09:20:51 19 INCLUDE COMPANIES SUCH AS MICROSOFT, AND FACEBOOK, CORRECT?

09:20:55 20 A. CORRECT.

09:20:56 21 Q. AND THAT WAS THE ASSUMPTION THAT YOU MADE IN FORMING YOUR
09:21:00 22 DAMAGES OPINIONS IN THIS CASE, CORRECT?

09:21:01 23 A. CORRECT.

09:21:02 24 Q. OKAY. NOW, YOU ALSO STATED AT THE BOTTOM HERE THAT YOU
09:21:10 25 ASSUMED THAT LARGE CLOUD COMPUTING CUSTOMERS ARE INDIFFERENT TO

09:21:14 1 THE TYPE OF CLI USED BECAUSE THEY ARE HIGHLY AUTOMATED AND USE
09:21:19 2 SYSTEM MANAGEMENT TOOLS OTHER THAN CLI'S, CORRECT?

09:21:23 3 A. CORRECT.

09:21:23 4 Q. AND AT TRIAL, YOU SPECIFICALLY TESTIFIED THAT YOU'VE SEEN
09:21:27 5 NO EVIDENCE THAT THESE CUSTOMERS CARE AT ALL ABOUT THE TYPE OF
09:21:31 6 CLI THAT THEY WERE GETTING?

09:21:34 7 A. CORRECT.

09:21:34 8 Q. SO YOU LOOKED AT 7500 DOCUMENTS, YOU LOOKED AT ALL THIS
09:21:40 9 TESTIMONY AND YOUR CONCLUSION WAS THAT THERE IS NO EVIDENCE
09:21:42 10 THAT ANY OF THESE HIGHLY AUTOMATED CUSTOMERS CARE AT ALL ABOUT
09:21:46 11 THE CLI THAT THEY ARE GETTING, THAT'S YOUR TESTIMONY; RIGHT?

09:21:50 12 A. MY TESTIMONY IS THAT THEY DON'T CARE AT ALL ABOUT THE TYPE
09:21:57 13 OF CLI.

09:21:58 14 Q. SO THEY DON'T CARE --

09:22:00 15 A. THAT THEY ARE GETTING. WITHIN THE CONTEXT OF THIS CASE.
09:22:03 16 OKAY. SO WE ARE NOT TALKING ABOUT LIKE THE CODE OR THE
09:22:06 17 FUNCTIONALITY HERE, THEY WANT THEIR CLI FUNCTION.

09:22:12 18 BUT MY UNDERSTANDING IS THAT'S NOT WHAT'S AT ISSUE IN THIS
09:22:15 19 CASE. WHAT'S AT ISSUE IN THIS CASE IS, FOR INSTANCE, COMMAND
09:22:20 20 EXPRESSIONS. AND YES, I THINK WHAT I CONCLUDED IS ACCURATELY
09:22:24 21 WITH RESPECT TO THAT.

09:22:26 22 Q. YOU FOUND NO EVIDENCE, WHATSOEVER, THAT ANY OF THESE
09:22:31 23 HIGHLY AUTOMATED CUSTOMERS CARE ABOUT THE TYPE OF CLI
09:22:36 24 EXPRESSIONS THAT THEY ARE GETTING; THAT'S YOUR TESTIMONY?

09:22:37 25 A. WELL, AS SOON AS YOU ASKED ME THE QUESTION, WHATSOEVER,

09:22:40 1 I'M PRETTY SURE YOU ARE GOING TO STICK SOMETHING IN FRONT OF MY
09:22:44 2 NOSE. SO I WILL SAY IF THERE ARE DOCUMENTS IN THE RECORD THAT
09:22:47 3 SHOW THAT, THEY ARE VERY MUCH THE EXCEPTION RATHER THAN THE
09:22:49 4 RULE.

09:22:49 5 Q. ISN'T IT TRUE, MS. ELSTEN, THAT EVEN THOUGH YOU DID
09:22:53 6 CAREFUL CASE STUDIES, WHAT YOU WERE LOOKING AT IS AN INCOMPLETE
09:22:57 7 RECORD WITH RESPECT TO MICROSOFT, FACEBOOK, AND ALL THE OTHER
09:23:00 8 CUSTOMERS THAT YOU ANALYZED FOR LOST PROFITS; YOU WOULD AGREE,
09:23:03 9 RIGHT?

09:23:04 10 A. WE LOOKED AT WHAT WE COULD FIND. NOW, OUR RECORD IS
09:23:13 11 ALWAYS INCOMPLETE --

09:23:14 12 Q. THANK YOU.

09:23:16 13 A. AND I DON'T CARE WHETHER YOU ARE DOING THAT FOR LITIGATION
09:23:18 14 OR FOR SOME OTHER BUSINESS PURPOSE, YOU NEVER HAVE A HUNDRED
09:23:22 15 PERCENT INFORMATION.

09:23:23 16 Q. AND WE KNOW THAT THAT'S IMPORTANT HERE IN THIS CASE
09:23:25 17 BECAUSE CISCO, ALONE, HAS 9500 CUSTOMERS AND ARISTA HAS 4,000
09:23:31 18 CUSTOMERS, YOU KNOW THAT; RIGHT?

09:23:33 19 A. I DIDN'T KNOW CISCO'S NUMBER, BUT I WILL TAKE YOUR WORD
09:23:36 20 FOR IT.

09:23:36 21 Q. OKAY. SO IT WOULD BE PRACTICALLY IMPOSSIBLE FOR US TO GO
09:23:41 22 AND COLLECT ALL THE DOCUMENTS FROM 9500 CUSTOMERS FROM CISCO
09:23:46 23 AND 4,000 CUSTOMERS FROM ARISTA AND EVALUATE ALL OF THE
09:23:50 24 E-MAILS, ALL OF THE DOCUMENTS IN ORDER TO ASCERTAIN A COMPLETE
09:23:55 25 RECORD OF WHAT HAPPENED; ISN'T THAT TRUE?

09:23:58 1
09:23:59 2
09:24:04 3
09:24:04 4
09:24:05 5
09:24:08 6
09:24:12 7
09:24:36 8
09:24:42 9
09:24:58 10
09:25:01 11
09:25:08 12
09:25:10 13
09:25:18 14
09:25:23 15
09:25:24 16
09:25:25 17
09:25:26 18
09:25:31 19
09:25:34 20
09:25:34 21
09:25:35 22
09:25:37 23
09:25:38 24
09:25:39 25

A. I THINK THAT'S FAIR.

Q. AND MANY OF THOSE DOCUMENTS, HISTORICALLY, MAY NO LONGER
EXIST, CORRECT?

A. SURE.

Q. OKAY. SO LET'S LOOK AT SOME OF THE SPECIFIC EVIDENCE WITH
RESPECT TO MICROSOFT RELATED TO CLI USAGE.

IF YOU CAN TAKE A LOOK AT 4262 IN YOUR BINDER.

DO YOU SEE THAT THIS IS A SERIES OF E-MAILS, MAY 10, 2012,
BETWEEN JOHN MITCHELL AT MICROSOFT AND ARIFF PREMJI AT ARISTA?

A. I'M SORRY, WHO DID YOU SAY FROM MICROSOFT?

Q. THIS IS JOHN MITCHELL, AT MICROSOFT.

A. YOU SAID 4262?

Q. YES, 4262.

A. I DON'T SEE MR. MITCHELL'S NAME -- OH, HERE IT IS. OKAY.
ON THE SECOND PAGE.

Q. DO YOU SEE THAT?

A. UH-HUH.

Q. AND YOU UNDERSTAND THAT YOU WERE -- THAT MR. PREMJI WAS
DEPOSED IN THIS CASE AND YOU HAD AN OPPORTUNITY TO CONSIDER HIS
DEPOSITION AS WELL?

A. I DID.

MR. PAK: YOUR HONOR, I WOULD LIKE TO ADMIT
EXHIBIT 4262 INTO EVIDENCE.

THE COURT: ANY OBJECTION?

MR. SILBERT: NO OBJECTION.

09:25:40 1 THE COURT: IT WILL BE ADMITTED.

09:25:41 2 (PLAINTIFF'S EXHIBIT 4262 WAS ADMITTED INTO EVIDENCE.)

09:25:41 3 BY MR. PAK:

09:25:42 4 Q. SO I HAVE EXCERPTED OUT ON SLIDE 9, SOME OF THE E-MAIL
09:25:54 5 EXCHANGES IN EXHIBIT 4262.

09:25:57 6 AND IF YOU COULD TAKE A LOOK AT THE TOP, JUSTIN CALLAWAY
09:26:05 7 AT ARISTA NETWORKS IS WRITING TO JOHN MITCHELL AT MICROSOFT,
09:26:09 8 AND IT STATES, "TAKE A LOOK AND IF YOU HAVE ANY OTHER
09:26:13 9 QUESTIONS, PLEASE LET ME KNOW. THE CONFIGURATION IS MUCH LIKE
09:26:17 10 CISCO CLI."

09:26:20 11 CORRECT?

09:26:20 12 A. SURE.

09:26:21 13 Q. SO THIS IS AN ARISTA EMPLOYEE TELLING MICROSOFT IN MAY 10,
09:26:26 14 2012, THAT ARISTA'S CONFIGURATION IS MUCH LIKE CISCO CLI; IS
09:26:31 15 THAT TRUE?

09:26:31 16 A. WELL, FOR SOMETHING VERY SPECIFIC.

09:26:34 17 Q. OKAY. AND LET'S TAKE A LOOK AT ANOTHER EXHIBIT --
09:26:41 18 ACTUALLY, BEFORE WE DO THAT, LET'S TAKE A LOOK AT MR. SADANA'S
09:26:45 19 TESTIMONY.

09:26:45 20 YOU'VE REVIEWED MR. SADANA'S DEPOSITION TESTIMONY IN THIS
09:26:49 21 CASE, CORRECT?

09:26:49 22 A. YES.

09:26:50 23 Q. SO IF WE GO TO THE NEXT SLIDE, HE WAS ASKED ABOUT THIS
09:26:55 24 PARTICULAR SET OF E-MAILS, AND THIS IS WHEN MR. SADANA, THE
09:27:01 25 CHIEF CUSTOMER OFFICER TESTIFIED.

09:27:04 1 "QUESTION: SO YOUR SYSTEM ENGINEER HERE IN 2012 WAS
09:27:08 2 TELLING FOLKS AT MICROSOFT, CONFIGURATION SYNTAX, THE
09:27:13 3 CONFIGURATION PROCESS, WILL BE MUCH LIKE THE CISCO CLI SYNTAX
09:27:16 4 AND CONFIGURATION; CORRECT?

09:27:18 5 "ANSWER: CORRECT."

09:27:21 6 THAT WAS HIS SWORN TESTIMONY, CORRECT?

09:27:23 7 A. SURE.

09:27:25 8 Q. AND YOU ARE NOT DISPUTING THIS?

09:27:27 9 A. WHAT, THAT THAT WAS HIS TESTIMONY?

09:27:30 10 Q. YES.

09:27:31 11 A. NO.

09:27:31 12 Q. LET'S TAKE A LOOK AT ANOTHER DOCUMENT IN YOUR BINDER,
09:27:38 13 7818. AND WHAT IS THIS DOCUMENT?

09:28:03 14 A. WELL, THERE'S A COVER E-MAIL FROM SUSIE CAULFIELD AT
09:28:09 15 ARISTA NETWORKS TO MR. SADANA. THE SUBJECT IS TOR, PROPOSAL
09:28:16 16 DRAFT. AND THEN THERE IS A DRAFT ATTACHED, IT LOOKS LIKE A
09:28:25 17 POWERPOINT PRESENTATION OR SOMETHING LIKE THAT.

09:28:26 18 Q. SO THIS IS AN ARISTA-PRODUCED DOCUMENT RELATING TO
09:28:29 19 FACEBOOK, CORRECT?

09:28:31 20 A. YES.

09:28:35 21 MR. PAK: YOUR HONOR, I WOULD LIKE TO ADMIT
09:28:37 22 EXHIBIT 7818 INTO THE RECORD.

09:28:39 23 MR. SILBERT: NO OBJECTION.

09:28:40 24 THE COURT: IT WILL BE ADMITTED.

09:28:41 25 (PLAINTIFF'S EXHIBIT 7818 WAS ADMITTED INTO EVIDENCE.)

09:28:41 1

BY MR. PAK:

09:28:41 2

Q. AND IF YOU COULD TURN TO -- ACTUALLY, LET'S BLOW UP THE
FIRST PAGE.

09:28:47 3

09:28:56 4

DO YOU SEE THAT THIS IS A PROPOSAL CALLED TOR, MADE BY

09:29:00 5

ARISTA TO FACEBOOK?

09:29:03 6

A. I'M SORRY, WHAT WAS THE QUESTION?

09:29:08 7

Q. DO YOU UNDERSTAND THAT THIS IS A PROPOSAL THAT WAS MADE BY
ARISTA TO FACEBOOK FOR A TOR PROJECT?

09:29:12 8

09:29:15 9

A. WELL, APPARENTLY IT'S A DRAFT. WHETHER IT ACTUALLY GOT TO
FACEBOOK OR NOT, I DON'T KNOW.

09:29:19 10

09:29:21 11

Q. OKAY. AND IF YOU COULD TAKE A LOOK -- SO YOU HAVE NO IDEA
WHETHER THIS WAS ACTUALLY SOMETHING THAT WAS SENT TO FACEBOOK
OR NOT?

09:29:27 12

09:29:28 13

09:29:30 14

A. WELL, YOU CAN'T -- YOU CAN'T TELL FROM THIS BECAUSE THIS
IS -- THE COVER MEMO SAYS IT'S A DRAFT.

09:29:36 15

09:29:38 16

Q. LET'S COME BACK TO THAT BECAUSE I WILL FIND SOME TESTIMONY
RELATING TO THAT.

09:29:42 17

09:29:42 18

SO WHY DON'T WE TAKE A LOOK AT ANOTHER DOCUMENT WHICH IS
EXHIBIT 6677.

09:29:49 19

09:30:01 20

AND THIS ONE IS FROM MR. ARIFF PREMJI TO ANSHUL SADANA.

09:30:06 21

AND IT'S DATED DECEMBER 12, 2012; DO YOU SEE THAT?

09:30:11 22

A. YES.

09:30:11 23

Q. AND DO YOU HAVE ANY REASON TO DISPUTE THE AUTHENTICITY OF
THIS ARISTA-PRODUCED DOCUMENT?

09:30:17 24

09:30:19 25

A. NO.

09:30:20 1
09:30:22 2
09:30:26 3
09:30:27 4
09:30:28 5
09:30:28 6
09:30:29 7
09:30:39 8
09:30:41 9
09:30:44 10
09:30:51 11
09:30:57 12
09:31:00 13
09:31:07 14
09:31:11 15
09:31:16 16
09:31:18 17
09:31:20 18
09:31:20 19
09:31:23 20
09:31:26 21
09:31:34 22
09:31:40 23
09:31:44 24
09:31:46 25

MR. PAK: I WOULD LIKE TO PRODUCE THIS EXHIBIT
YOUR HONOR 6677 INTO THE RECORD.

MR. SILBERT: NO OBJECTION.

THE COURT: IT WILL BE ADMITTED.

(PLAINTIFF'S EXHIBIT 6677 WAS ADMITTED INTO EVIDENCE.)

BY MR. PAK:

Q. AND IF WE TURN TO SLIDE 12, SO I'VE EXCERPTED OUT A
PORTION OF THIS DOCUMENT THAT WAS SENT TO MICROSOFT BY ARISTA.

AND IF YOU CAN SEE -- ACTUALLY, THIS IS A DOCUMENT THAT
MICROSOFT GAVE TO ARISTA TALKING ABOUT THE TEST PLAN NECESSARY
FOR VENDORS, SO ARISTA WOULD BE ONE OF THE VENDORS IN THIS
CASE, CORRECT?

A. I'M SORRY, AM I SUPPOSED TO SEE THAT SOMEWHERE HERE?

Q. YEAH. SO IF YOU GO TO SLIDE 12, DO YOU SEE THAT UNDER
BGP, "VENDOR IS EXPECTED TO PRESENT DOCUMENTATION,
CLARIFICATIONS ON THE BGP IMPLEMENTATION."

DO YOU SEE THAT?

A. I DO SEE THAT.

Q. SO VENDOR HERE IN THIS CASE WOULD BE ARISTA BECAUSE THAT'S
THE VENDOR THAT'S SELLING TO MICROSOFT, CORRECT?

A. I WILL ACCEPT YOUR -- I CAN'T TELL THAT FROM WHAT YOU ARE
SHOWING ME HERE, BUT I AM WILLING TO ACCEPT THAT.

Q. AND DO YOU SEE HERE THAT ONE OF THE THINGS MICROSOFT TOLD
VENDORS, INCLUDING ARISTA, IS "WE WANT TO SEE DOCUMENTATION ON
CLI SHOW COMMANDS RELATED TO BGP DEBUGGING. FOR EXAMPLE, IF A

09:31:51 1 SHOW IP BGP NEIGHBOR COMMAND IS USED, DOES THE OUTPUT REPRESENT
09:32:00 2 BGP ADJUSTED RIB OUTPUT PRIOR TO OR AFTER OUTBOUND FEATURE
09:32:07 3 APPLICATION."

09:32:07 4 DO YOU SEE THAT?

09:32:07 5 A. I DO.

09:32:08 6 Q. SO THERE ARE A LOT OF TECHNICAL WORDS THERE, BUT YOU
09:32:11 7 UNDERSTAND THAT ONE OF THE COMMANDS AT ISSUE IN THIS CASE IS
09:32:15 8 SHOW "IP BGP NEIGHBOR?"

09:32:19 9 A. I DON'T HAVE KNOWLEDGE OF EVERY COMMAND THAT'S ALLEGED IN
09:32:21 10 THIS CASE.

09:32:21 11 Q. I WILL REPRESENT TO YOU THAT IT IS ONE IN THE CASE.

09:32:24 12 A. OKAY.

09:32:25 13 Q. MS. ELSTEN, WHAT'S HAPPENING IS MICROSOFT IS SENDING OUT A
09:32:29 14 REQUEST FOR PROPOSAL TO VENDORS, INCLUDING ARISTA, AS LATE AS
09:32:34 15 2012, AND THEY ARE SAYING, SHOW ME DOCUMENTATION THAT YOUR
09:32:38 16 SYSTEM HAS A CLI SHOW COMMAND RELATED TO BGP DEBUGGING, AND IT
09:32:44 17 SPECIFICALLY IDENTIFIES THE SHOW IP BGP NEIGHBOR.

09:32:50 18 DO YOU SEE THAT?

09:32:51 19 A. GENERALLY, I'M GOING TO AGREE WITH THAT.

09:32:54 20 Q. SO HERE'S A DOCUMENT THAT YOU DIDN'T PRESENT TO US WHERE
09:32:58 21 MICROSOFT ACTUALLY DOES DESCRIBE SOME OF THE DISPUTED COMMANDS
09:33:03 22 AT ISSUE, AND THE SPECIFIC FORMAT AND SYNTAX OF THOSE COMMANDS
09:33:08 23 IN A REQUEST FOR PROPOSAL; ISN'T THAT TRUE?

09:33:11 24 A. OKAY.

09:33:12 25 Q. YOU ARE NOT DENYING THAT; RIGHT?

09:33:14 1 A. YOU ARE FILLING IN A LOT FOR ME HERE.

09:33:17 2 I'M NOT -- AGAIN, I DON'T WANT TO HANG UP THE QUESTIONING,
09:33:21 3 SO I CAN'T TELL IF ALL OF THOSE THINGS ARE TRUE. THERE
09:33:25 4 CERTAINLY SEEMS TO BE SOME DISCUSSION, AS WE'VE JUST GONE OVER,
09:33:29 5 THAT RELATES TO THAT COMMAND.

09:33:31 6 Q. AND IN FACT, I'M NOT GOING TO GO THROUGH ALL OF THESE
09:33:36 7 EXAMPLES, IF YOU LOOK AT EXHIBIT 6677, WHICH IS NOW IN THE
09:33:40 8 RECORD, THIS DOCUMENT FROM MICROSOFT REFERENCES A NUMBER OF THE
09:33:43 9 DISPUTED COMMANDS. FOR EXAMPLE, SHOW SPANNING-TREE, AS WELL AS
09:33:48 10 VARIOUS DEBUG COMMANDS, SHOW IP BGP SUMMARY, SHOW IP IPV6, BGP
09:33:54 11 SUMMARY.

09:33:55 12 THESE ARE REFERENCES IN MICROSOFT DOCUMENTS, THE SPECIFIC
09:33:59 13 CLI COMMANDS AND THEIR SYNTAX; ISN'T THAT TRUE? YOU ARE NOT
09:34:05 14 DISPUTING THAT; RIGHT?

09:34:06 15 A. WELL, YOU KNOW, IF I LOOK AT WHAT'S UNDERLINED HERE, IT
09:34:10 16 SAYS USING COMMANDS SIMILAR TO CISCO'S -- LET'S SEE, LOG IN VIA
09:34:17 17 CLI AND THIS COMMAND OR EQUIVALENT.

09:34:21 18 IT SEEMS TO BE LOOKING FOR A CERTAIN FIND OF
09:34:26 19 FUNCTIONALITY.

09:34:26 20 IF YOU ARE ASKING ME JUST ON THE BASIS OF THIS DOCUMENT TO
09:34:29 21 SAY, DOES THIS SHOW MICROSOFT WHAT'S EXACTLY THAT, I CAN'T
09:34:34 22 AGREE WITH THAT. IT SEEMS LIKE THEY WANT SOMETHING SIMILAR,
09:34:37 23 THEY WANT SOMETHING EQUIVALENT, IT DOES NOT SEEM TO SHOW THAT
09:34:42 24 THEY WANT EXACTLY THAT THING.

09:34:43 25 Q. BUT AT LEAST ABOUT RESPECT TO THIS DOCUMENT, YOU AGREE

09:34:46 1 WITH ME THAT SPECIFIC CLI COMMANDS AT ISSUE IN THIS CASE ARE
09:34:50 2 SPELLED OUT IN MICROSOFT DOCUMENTS TO ARISTA, CORRECT?

09:34:53 3 A. WELL, I WILL ACCEPT YOUR REPRESENTATION THAT THE COMMANDS
09:34:57 4 THAT ARE ON HERE ARE AT ISSUE IN THIS CASE, FOR SURE.

09:35:00 5 Q. LET'S TAKE A LOOK AT EXHIBIT 650 IN YOUR DOCUMENT BINDER.
09:35:13 6 AND THIS IS AN E-MAIL THAT WAS SENT ON JUNE 6, 2014, FROM
09:35:19 7 MR. SUNDAR BETTAHALLI TO OTHERS WITHIN ARISTA.

09:35:27 8 DO YOU HAVE ANY REASON TO DISPUTE THE AUTHENTICITY OF THIS
09:35:30 9 ARISTA-PRODUCED DOCUMENT?

09:35:32 10 A. NO.

09:35:33 11 MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE THIS
09:35:35 12 DOCUMENT INTO EVIDENCE. 650.

09:35:36 13 MR. SILBERT: NO OBJECTION.

09:35:37 14 THE COURT: IT WILL BE ADMITTED.

09:35:38 15 (PLAINTIFF'S EXHIBIT 650 WAS ADMITTED INTO EVIDENCE.)

09:35:38 16 BY MR. PAK:

09:35:39 17 Q. SO LET'S HAVE THAT UP ON THE SCREEN. SO IF YOU BLOW UP
09:35:52 18 THE TOP THIS IS SUNDAR BETTAHALLI AT ARISTA. AND AGAIN, THIS
09:35:52 19 IS AS LATE AS JUNE, 2014.

09:36:00 20 AND IT SAYS, "WE HAD A CALL WITH THE MICROSOFT TEAM TO
09:36:02 21 UNDERSTAND THEIR DHCP OPTION AND INFORMATION REQUIREMENTS."

09:36:05 22 DO YOU SEE THAT?

09:36:06 23 A. YES.

09:36:06 24 Q. AND THEN THERE'S "THE CISCO N3K PROVIDES A DHCP RELAY
09:36:13 25 CLI," AND IT SPECIFIES THE FORMAT FOR THAT CLI COMMAND FROM

09:36:16 1 CISCO; DO YOU SEE THAT?

09:36:17 2 A. YES.

09:36:18 3 Q. MS. ELSTEN, IN THIS DOCUMENT FROM ARISTA IN 2014, AFTER A
09:36:30 4 CALL FOLLOWING -- AFTER A CALL WITH MICROSOFT FOLLOWING THAT
09:36:35 5 CALL, ARISTA EMPLOYEES WRITE, "MICROSOFT WANTS US TO MATCH
09:36:38 6 CISCO FORMAT EXACTLY AND ARE NOT WILLING TO MODIFY THEIR SERVER
09:36:44 7 SIDE SCRIPTS TO PARSE DIFFERENT FORMATS COMING FROM CISCO AND
09:36:48 8 ARISTA SWITCHES."

09:36:50 9 DO YOU SEE THAT?

09:36:51 10 A. I DO.

09:36:52 11 Q. YOU DIDN'T PRESENT THIS TESTIMONY OR EVIDENCE TO THIS
09:36:56 12 JURY, CORRECT?

09:36:57 13 A. WELL, NO. THIS MEMO I'M PRETTY FAMILIAR WITH BECAUSE THE
09:37:04 14 TECHNICAL JARGON GOES BEYOND ME.

09:37:06 15 I HAD A FAIRLY LENGTHY CONVERSATION WITH MR. SADANA ON
09:37:10 16 THIS. AND MY BASIC UNDERSTANDING IS THAT WHAT IS BEING ASKED
09:37:16 17 FOR HERE IS NOT IDENTICAL CLI, IT'S IDENTICAL DATA PACKET
09:37:26 18 FORMATS.

09:37:26 19 AND THEREFORE, IN MY CONCLUSION, IT WAS NOT RELEVANT TO
09:37:29 20 THIS CASE.

09:37:29 21 Q. YOU DIDN'T PRESENT THIS DOCUMENT, WHERE IT SAYS, MICROSOFT
09:37:33 22 WANTS US TO MATCH CISCO FORMAT EXACTLY, AND ARE NOT WILLING TO
09:37:37 23 MODIFY THEIR SERVER SIDE SCRIPTS TO PARSE DIFFERENT FORMATS
09:37:42 24 COMING FROM CISCO AND ARISTA SWITCHES; DO YOU SEE THAT?

09:37:46 25 A. I DID NOT. AND THE REASON I DIDN'T IS BECAUSE MY

09:37:49 1 UNDERSTANDING IS THAT THIS IS NOT RELEVANT TO WHAT WE WERE
09:37:53 2 DISCUSSING IN THIS CASE.

09:37:54 3 Q. BUT MS. ELSTEN, YOU KNOW THAT ONE OF THE BUILDING BLOCKS
09:37:57 4 OF THE CLI INTERFACE AT ISSUE IN THIS CASE IS NOT JUST THE CLI
09:38:02 5 COMMANDS, BUT THE SCREEN OUTPUTS THAT COME OUT OF SWITCHES; YOU
09:38:05 6 UNDERSTAND THAT, CORRECT?

09:38:06 7 A. YEAH, I DO UNDERSTAND THAT.

09:38:09 8 Q. LET'S TALK ABOUT FACEBOOK AGAIN.

09:38:13 9 AND IF YOU GO TO -- IF YOU GO TO SLIDE 16, AND I'VE
09:38:26 10 EXCERPTED OUT A SECTION FROM YOUR EXPERT REPORT WHERE YOU STATE
09:38:29 11 THAT MR. SURYANARAYANAN TOLD YOU THAT FACEBOOK DOES NOT USE THE
09:38:38 12 ARISTA EOS CLI; DO YOU SEE THAT?

09:38:41 13 A. YES.

09:38:41 14 Q. SO WHAT YOU WROTE IN YOUR REPORT IS YOU HAD A CONVERSATION
09:38:45 15 WITH AN ARISTA ENGINEER AND HE TOLD YOU SPECIFICALLY THAT
09:38:48 16 FACEBOOK DOES NOT USE THE ARISTA EOS CLI, CORRECT?

09:38:51 17 A. YES.

09:38:51 18 Q. AND YOU USED THAT AS A FOUNDATION FOR YOUR OPINION THAT
09:38:55 19 FACEBOOK SHOULD BE STRICKEN FROM THE LOST PROFITS ANALYSIS,
09:38:57 20 CORRECT?

09:38:58 21 A. ULTIMATELY NOT. THAT IS NOTED IN HERE, BUT IT'S NOT THE
09:39:08 22 PRIMARY EVIDENCE WE USE FOR THAT.

09:39:09 23 Q. BUT MS. ELSTEN YOU DID TAKE FACEBOOK OFF THE LIST BECAUSE
09:39:13 24 YOU BELIEVE THAT FACEBOOK DOESN'T CARE ABOUT THE CISCO CLI?

09:39:15 25 A. THAT IS CORRECT. WELL, I DON'T BELIEVE THAT THEY CARE

09:39:19 1 ABOUT WHAT'S AT ISSUE IN THIS CASE.

09:39:21 2 Q. WHICH IS THE CISCO CLI, CORRECT?

09:39:23 3 A. NOT IN ITS ENTIRETY.

09:39:26 4 Q. YOU UNDERSTAND THAT THE BUILDING BLOCKS ARE AT ISSUE IN
09:39:33 5 THIS CASE ARE PART OF THE CISCO CLI?

09:39:34 6 A. PART OF, YES.

09:39:36 7 Q. NOW LET'S LOOK AT 648 IN YOUR DOCUMENTS.

09:39:56 8 MR. PAK: AND AGAIN, YOUR HONOR, I WOULD LIKE TO
09:39:57 9 ADMIT 648 INTO EVIDENCE. THIS IS AN ARISTA PRODUCED DOCUMENT.

09:40:05 10 THE COURT: ANY OBJECTION, MR. SILBERT?

09:40:07 11 MR. SILBERT: NO OBJECTION.

09:40:08 12 THE COURT: IT WILL BE ADMITTED.

09:40:10 13 (PLAINTIFF'S EXHIBIT 648 WAS ADMITTED INTO EVIDENCE.)

09:40:10 14 BY MR. PAK:

09:40:10 15 Q. LET'S TAKE A LOOK AT THIS DOCUMENT, AND IF WE CAN HAVE --
09:40:14 16 ACTUALLY, I HAVE A SLIDE 18.

09:40:19 17 WE'VE HEARD FROM MR. HOLBROOK. HE WROTE AN E-MAIL
09:40:24 18 AUGUST 17, 2011. AND HE SAYS, "THIS WAS ON BOTH MICROSOFT AND
09:40:28 19 FACEBOOK'S WISH LIST."

09:40:30 20 DO YOU SEE THAT IN THE E-MAIL?

09:40:31 21 A. YEAH, I DO.

09:40:32 22 Q. AND ON THE BOTTOM IT SAYS, "THE BELOW LINK GIVES
09:40:36 23 INFORMATION ABOUT CORRESPONDING CISCO CLI."

09:40:39 24 AND DO YOU SEE THAT THERE ARE CLI COMMANDS THAT ARE LISTED
09:40:42 25 FROM CISCO'S DOCUMENTS WITH RESPECT TO BOTH MICROSOFT AND

09:40:45 1
09:40:47 2
09:40:48 3
09:40:53 4
09:41:11 5
09:41:18 6
09:41:28 7
09:41:32 8
09:41:36 9
09:41:38 10
09:41:42 11
09:41:47 12
09:41:50 13
09:41:52 14
09:41:55 15
09:41:58 16
09:42:00 17
09:42:01 18
09:42:05 19
09:42:05 20
09:42:07 21
09:42:07 22
09:42:07 23
09:42:15 24
09:42:20 25

FACEBOOK?

A. YES, YES.

Q. LET'S TAKE A LOOK AT ONE MORE DOCUMENT. AND IF YOU LOOK AT 4811. ACTUALLY, LET'S JUMP TO 4815, WHICH IS A LARGER DOCUMENT THAT HAS A SPREADSHEET. AND THIS IS 4815-B, IN YOUR BINDER.

A. DID YOU SAY 4815-B?

Q. 4815-B, I BELIEVE IT'S ONE OF THE SPREADSHEETS. AND I WILL REPRESENT TO YOU --

A. OKAY. I'M SORRY TO INTERRUPT, WHAT DOES THE "B" REFER TO?

Q. I BELIEVE IT'S JUST A DESIGNATION, WE CAN CALL IT 4815.

A. OH, I THOUGHT I WAS LOOKING FOR SOMETHING THAT SAID "B."

Q. NO.

IT'S A FACEBOOK BUG TRACKER SPREADSHEET THAT'S BEEN PRODUCED TO US BY ARISTA IN THIS CASE. OKAY?

A. YES.

MR. PAK: AND AGAIN, YOUR HONOR, I WOULD LIKE TO ADMIT 4815-B INTO THE RECORD.

MR. SILBERT: NO OBJECTION.

THE COURT: IT WILL BE ADMITTED.

(PLAINTIFF'S EXHIBIT 4815-B WAS ADMITTED INTO EVIDENCE.)

BY MR. PAK:

Q. AND IF YOU LOOK AT SLIDE 21 IN THE SCREEN IN FRONT OF YOU, I'VE TAKEN AN EXCERPT OUT OF THIS BUG TRACKING SPREADSHEET.

SO THESE ARE THE BUGS THAT ARE BEING REPORTED BY FACEBOOK

09:42:24 1 TO ARISTA SO THAT ARISTA ENGINEERS CAN FIX CERTAIN ISSUES WITH
09:42:30 2 RESPECT TO ARISTA PRODUCTS AT FACEBOOK; YOU UNDERSTAND THAT,
09:42:33 3 CORRECT?

09:42:33 4 MR. SILBERT: I'M SORRY, BUT THIS SLIDE REFERS TO A
09:42:36 5 DIFFERENT EXHIBIT. MAYBE YOU MEANT A DIFFERENT SLIDE.

09:42:39 6 MR. PAK: 1415-B. RIGHT HERE. THANK YOU.

09:42:42 7 THE COURT: IS THAT OKAY.

09:42:43 8 BY MR. PAK:

09:42:44 9 Q. SO SLIDE 20 IS THE 4815-B. DO YOU SEE THAT?

09:42:47 10 A. YES.

09:42:47 11 Q. AND DO YOU SEE THAT IN THIS BUG TRACKING SOFTWARE AT
09:42:52 12 FACEBOOK, YOU HAVE A NUMBER OF ENTRIES THAT RELATE SPECIFICALLY
09:42:57 13 TO CLI COMMANDS THAT ARE AT ISSUE IN THIS CASE.

09:42:59 14 FOR EXAMPLE, ROUTER, BGP, ASN, SHOW IP ROUTE, SHOW IP
09:43:06 15 ROUTE IN THE NOTES SECTION. THESE ARE ALL CLI COMMANDS THAT
09:43:10 16 ARE AT ISSUE IN THIS CASE BEING REPORTED AS BUGS COMING FROM
09:43:15 17 FACEBOOK, CORRECT?

09:43:16 18 A. WELL, THE "AT ISSUE IN THIS CASE" PART, I WILL TAKE YOUR
09:43:20 19 WORD FOR IT. AND THE DOCUMENT CLEARLY DOES REFER TO THEM.

09:43:25 20 Q. YES. SO AGAIN, THERE IS EVIDENCE IN THIS CASE,
09:43:30 21 MS. ELSTEN, THAT FACEBOOK DOES USE THE EOS CLI COMMANDS THAT
09:43:33 22 ARE ACCUSED OF INFRINGEMENT IN THIS CASE; ISN'T THAT TRUE?

09:43:37 23 A. YEAH. I DIDN'T THINK THAT WAS DISPUTED.

09:43:44 24 Q. SO YOU ARE NOT DISPUTING THAT FACEBOOK, MICROSOFT, GOOGLE,
09:43:48 25 ALL THESE AUTOMATION CUSTOMERS USE THE CLI COMMANDS THAT ARE AT

09:43:52 1 ISSUE IN THIS CASE?

09:43:53 2 A. TO SOME DEGREE, YES.

09:43:55 3 Q. IN FACT, YOU KNOW THEY USE IT AS PART OF THERE AUTOMATION
09:43:59 4 TOOLS. THAT'S THE TESTIMONY WE HEARD, CORRECT?

09:44:02 5 A. THAT'S MY UNDERSTANDING.

09:44:06 6 Q. SO LET'S TAKE A LOOK AT YOUR SLIDE, BECAUSE I THINK WHEN
09:44:11 7 YOU DID THE LOST PROFITS ANALYSIS, YOU STRUCK A NUMBER OF
09:44:14 8 COMPANIES OFF OF YOUR LIST.

09:44:19 9 MR. PAK: AND DO WE HAVE MS. ELSTEN'S SLIDE 37.

09:44:39 10 OKAY. AND THEN IF YOU TURN TO -- ACTUALLY, THERE'S A
09:44:44 11 MATHEMATICAL CALCULATION THAT SHE DOES AT THE END WHERE SHE HAS
09:44:48 12 THE LOST PROFITS NUMBER.

09:44:54 13 OR MAYBE -- ACTUALLY, MR. FISHER, SLIDE 37 IN MY
09:44:59 14 PRESENTATION, I THINK HAS SOME OF THE NUMBERS THAT MS. ELSTEN
09:45:05 15 YOU HAVE.

09:45:06 16 Q. SO MS. ELSTEN, I TOOK AN EXCERPT FROM YOUR SLIDE 45; DO
09:45:09 17 YOU SEE THAT?

09:45:12 18 A. NO. WAIT A MINUTE, YOU TOOK AN EXCERPT FROM --

09:45:19 19 Q. ALL I DID WAS I REPRODUCED YOUR DIRECT EXAMINATION ON
09:45:23 20 SLIDE 45.

09:45:25 21 A. I WAS GOING TO SAY IT LOOKS LIKE THE WHOLE SLIDE TO ME.

09:45:28 22 Q. WHAT YOU WERE SAYING IS THAT ALTHOUGH ARISTA GENERATED
09:45:31 23 \$1.3 BILLION IN REVENUE AND GAINED SIGNIFICANT MARKET SHARE
09:45:34 24 AGAINST CISCO IN THE HIGH SPEED ETHERNET SWITCHING MARKET, YOU
09:45:39 25 BELIEVE THAT CISCO ONLY SUFFERED \$2 MILLION IN LOST PROFITS;

09:45:44 1 THAT'S YOUR ASSESSMENT, CORRECT?

09:45:45 2 A. MY ASSESSMENT IS THAT THAT'S WHAT THEY DEMONSTRATED.

09:45:50 3 Q. BUT ISN'T IT TRUE, MS. ELSTEN, THAT IF THE JURY BELIEVES

09:45:55 4 THAT MICROSOFT SHOULD BE ONE OF THE CUSTOMERS THAT SHOULD BE

09:45:59 5 INCLUDED IN A LOST PROFITS CALCULATION, BECAUSE OF THEIR USAGE

09:46:03 6 OF THE CLI COMMANDS AT ISSUE, THAT THAT WOULD ADD ANOTHER

09:46:09 7 \$124 MILLION TO THE \$2 MILLION NUMBER YOU HAVE HERE?

09:46:14 8 A. IF THE JURY THINKS MICROSOFT BELONGS ON THIS LIST, THE

09:46:17 9 NUMBER WOULD GO UP. I DON'T KNOW THE CALCULATION OFF THE TOP

09:46:21 10 OF MY HEAD.

09:46:21 11 Q. I WILL REPRESENT TO YOU THAT, BASED ON YOUR MATH, THAT IT

09:46:24 12 WOULD BE \$124 MILLION IN ADDITION TO THE \$2 MILLION THAT YOU

09:46:29 13 HAVE?

09:46:29 14 A. OKAY.

09:46:29 15 Q. DOES THAT SOUND RIGHT TO YOU?

09:46:31 16 A. I CAN'T CONFIRM OR DENY THAT ONE.

09:46:33 17 Q. OKAY. FACEBOOK.

09:46:36 18 IF THE JURY FINDS THAT FACEBOOK SHOULD BE INCLUDED IN THE

09:46:39 19 LOST PROFITS CALCULATION BECAUSE OF ITS USE OF CLI COMMANDS,

09:46:43 20 THAT WOULD ADD ANOTHER \$96 MILLION TO YOUR PROFITS NUMBER,

09:46:51 21 BASED ON YOUR MATH?

09:46:51 22 A. OKAY. AND AGAIN, THE NUMBER WOULD GO UP IF THE JURY

09:46:54 23 THINKS THAT FACEBOOK.

09:46:59 24 Q. IT WOULD GO UP \$96 MILLION; DO YOU DISPUTE THAT?

09:47:02 25 A. AGAIN, I WILL TAKE YOUR WORD FOR IT, I DON'T HAVE THE

09:47:05 1 NUMBER OFF THE TOP OF MY HEAD.

09:47:07 2 Q. BUT YOU UNDERSTAND THAT BOTH MICROSOFT AND FACEBOOK ARE
09:47:10 3 TWO OF THE LARGEST CUSTOMERS WHEN IT COMES TO PROFITS
09:47:14 4 CALCULATION?

09:47:14 5 A. OH, ABSOLUTELY.

09:47:16 6 Q. SO THESE NUMBERS DON'T SURPRISE YOU THAT THESE ARE IN THE
09:47:19 7 RANGES OF THE NUMBERS THAT YOU WOULD EXPECT TO SEE, CORRECT?

09:47:21 8 A. NO, THEY DON'T SURPRISE ME.

09:47:23 9 Q. AND YOU ALSO TOOK OUT A CATEGORY OF CUSTOMERS CALLED LOW
09:47:28 10 LATENCY CUSTOMERS; DO YOU RECALL THAT?

09:47:29 11 A. YES.

09:47:30 12 Q. IF THE JURY WERE TO FIND THAT --

09:47:33 13 A. I'M SORRY, CAN I CORRECT THAT? OKAY. WE TOOK OUT
09:47:36 14 SPECIFIC CUSTOMERS THAT WE DESCRIBED AS LOW LATENCY. THAT'S
09:47:42 15 NOT ALL CUSTOMERS THAT WOULD NECESSARILY FIT INTO THAT GROUP,
09:47:46 16 THOSE ARE THE ONES THAT WERE IDENTIFIED BY DR. CHEVALIER AS
09:47:50 17 SPECIFIC INSTANCES OF LOST PROFITS.

09:47:56 18 Q. MS. ELSTEN, IF THE JURY WERE TO AGREE WITH AND FIND THAT
09:47:59 19 THE LOW LATENCY CUSTOMERS THAT YOU TOOK OFF THE LIST SHOULD BE
09:48:03 20 ADDED BACK INTO THE LOST PROFITS CALCULATION, THAT WOULD ADD
09:48:06 21 ANOTHER \$11 MILLION?

09:48:10 22 A. THE NUMBER WOULD GO UP FOR SURE.

09:48:13 23 Q. DOES THAT SOUND RIGHT TO YOU?

09:48:15 24 A. THE 11 MILLION?

09:48:17 25 Q. YES.

09:48:17 1

A. I CAN'T TELL YOU OFF THE TOP OF MY HEAD.

09:48:20 2

Q. SO I CAN'T DO METHOD AS WELL AS MR. NELSON, BUT LET'S SEE IF I CAN TRY HERE.

09:48:23 3

09:48:24 4

SO IF I TAKE 124 PLUS 96, I BELIEVE THAT WOULD GET ME TO \$220 MILLION; DOES THAT SOUND RIGHT?

09:48:29 5

09:48:33 6

A. HE GAVE YOU A SLIP OF PAPER, I DON'T THINK YOU ARE DOING THAT IN YOUR HEAD.

09:48:36 7

09:48:37 8

Q. IT JUST SAID "YOU ARE ABOUT AT 40 MINUTES," SO I'M TRYING TO DO THE MATH IN MY HEAD.

09:48:41 9

09:48:43 10

SO 124 PLUS 96, I BELIEVE THAT GETS US TO \$220 MILLION; DOES THAT SOUND RIGHT?

09:48:49 11

09:48:50 12

A. OKAY.

09:48:51 13

Q. AND THEN IF YOU ADD ANOTHER 11 MILLION, THAT'S \$231 MILLION, CORRECT?

09:48:55 14

09:48:56 15

A. YES.

09:48:57 16

Q. AND THEN IF I ADD THE 2 MILLION, THAT'S \$233 MILLION; DOES THAT SOUND RIGHT?

09:49:02 17

09:49:03 18

A. IF YOU ADDED WHAT?

09:49:06 19

Q. THE \$2 MILLION THAT YOU HAD, THAT WOULD BRING US TO \$233 MILLION?

09:49:09 20

09:49:09 21

A. WAIT A MINUTE, ARE WE TALKING ABOUT PROFITS OR REVENUES HERE?

09:49:12 22

09:49:13 23

Q. I'M TALKING ABOUT PROFITS, THESE ARE PROFIT NUMBERS. EVERYTHING I'VE STATED ARE PROFIT NUMBERS?

09:49:16 24

09:49:18 25

A. OKAY. YES.

09:49:18 1 Q. SO IF THE JURY DISAGREES WITH YOU THAT FACEBOOK,
09:49:25 2 MICROSOFT, AND THE SPECIFIC LOW LATENCY CUSTOMERS SHOULD BE
09:49:30 3 INCLUDED IN THE LOST PROFITS CALCULATION, THEN WE GET TO A
09:49:35 4 NUMBER OF \$233 MILLION IN LOST PROFIT DAMAGE TO CISCO BASED ON
09:49:41 5 YOUR MAT.

09:49:42 6 YOU ARE NOT DISPUTING THAT?

09:49:43 7 A. IF THE JURY THINKS THAT'S APPROPRIATE, I WILL TAKE YOUR
09:49:47 8 REPRESENTATION THAT THOSE ARE THE CORRECT NUMBERS.

09:49:53 9 Q. WITH RESPECT TO DISGORGEMENT, YOU WOULD AGREE, MS. ELSTEN,
09:50:04 10 THAT WE HAVE TO HAVE A METHODOLOGY THAT IS CONSISTENT WITH THE
09:50:06 11 EVIDENCE, CORRECT?

09:50:07 12 A. YES.

09:50:08 13 Q. AND YOU AGREE THAT ONE OF THE GUIDING PRINCIPLES WHEN YOU
09:50:17 14 ADD UP NUMBERS IS YOU SHOULD NOT DOUBLE COUNT NUMBERS?

09:50:20 15 A. GENERALLY, YES.

09:50:21 16 Q. THAT WOULD BE A MISTAKE TO DOUBLE COUNT NUMBERS WHEN YOU
09:50:23 17 ARE ADDING THEM?

09:50:24 18 A. I THINK I UNDERSTAND WHAT YOU MEAN, YES.

09:50:31 19 Q. AND WITH RESPECT TO SOME OF YOUR FAIR USE OPINIONS IN THIS
09:50:35 20 CASE, WERE YOU IN THE COURTROOM WHEN MR. VENKATRAMAN FROM HP
09:50:39 21 TESTIFIED?

09:50:39 22 A. NO, I WAS NOT.

09:50:40 23 Q. HAVE YOU READ HIS TRIAL TESTIMONY?

09:50:43 24 A. NO, I DON'T BELIEVE I HAVE.

09:50:44 25 Q. WERE YOU IN THE ROOM WHEN DR. BLACK WAS EXAMINED BY,

09:50:49 1 ACTUALLY MR. NELSON, ON HIS OPINIONS OR LACK OF HIS OPINIONS ON
09:50:54 2 WIDESPREAD USAGE OF THE CLI COMMANDS AT ISSUE IN THIS CASE?
09:50:57 3 A. I WAS NOT IN COURT FOR DR. BLACK'S TESTIMONY, THAT I HAVE
09:51:03 4 READ.
09:51:03 5 Q. YOU READ THAT; RIGHT?
09:51:04 6 A. YEAH.
09:51:04 7 Q. AND JUST TO BE CLEAR, YOU HAVE NOT DONE ANY INDEPENDENT
09:51:07 8 ASSESSMENT YOURSELF, WHETHER THERE'S ANY WIDESPREAD USAGE OF
09:51:13 9 ALL THE DIFFERENT ELEMENTS OF THE CLI FROM CISCO AT ISSUE IN
09:51:16 10 THIS CASE, CORRECT?
09:51:16 11 A. YOU MEAN IN AN ANALYSIS OF THE TYPE THAT DR. BLACK DID?
09:51:20 12 Q. TECHNICAL ANALYSIS?
09:51:22 13 A. WHERE YOU ACTUALLY GO THROUGH THE PROGRAMS AND -- NO, I
09:51:25 14 DIDN'T DO THAT.
09:51:26 15 Q. YOU WERE RELYING PURELY ON DR. BLACK'S TECHNICAL
09:51:31 16 ASSESSMENT WITH RESPECT TO VENDOR USAGE OF THE CLI COMMANDS,
09:51:34 17 CORRECT?
09:51:34 18 A. WELL, WITH RESPECT TO THE DEGREE OF VENDOR USAGE. WITH
09:51:38 19 RESPECT TO THE FACT OF VENDOR USAGE, NO, I CAN SEE THE
09:51:41 20 MATERIALS IN THE PRODUCTION THAT VERIFY THAT.
09:51:43 21 Q. BUT WITH RESPECT TO HIS ANALYSIS OF MATCHING UP NUMBER OF
09:51:47 22 COMMANDS TO NUMBER OF VENDORS, YOU ARE RELYING ON DR. BLACK
09:51:50 23 PURELY FOR THAT ANALYSIS, CORRECT?
09:51:52 24 A. FOR THE NUMBERS I AM, YES.
09:51:53 25 Q. AND YOU WERE IN THE COURTROOM WHEN DR. BLACK TESTIFIED

09:51:55 1 THAT HE HAS NO OPINION SPECIFICALLY ON WHAT WOULD CONSTITUTE
09:51:59 2 WIDESPREAD USAGE OF CLI COMMANDS, YOU READ THAT IN THE TRIAL
09:52:02 3 TESTIMONY, CORRECT?

09:52:03 4 A. WELL, I MUST HAVE, BUT I DON'T RECALL IT.

09:52:07 5 MR. PAK: THAT'S ALL I HAVE FOR THIS WITNESS,
09:52:09 6 YOUR HONOR.

09:52:09 7 THE COURT: THANK YOU.

09:52:09 8 MR. SILBERT, REDIRECT?

09:52:11 9 MR. SILBERT: A FEW QUESTIONS.

09:52:12 10 THANK YOU, YOUR HONOR.

09:52:13 11 **REDIRECT EXAMINATION**

09:52:13 12 BY MR. SILBERT:

09:52:32 13 Q. GOOD MORNING, MS. ELSTEN.

09:52:33 14 A. GOOD MORNING.

09:52:39 15 MR. SILBERT: JEFF, COULD YOU PLEASE PUT ON THE
09:52:41 16 SCREEN, TRIAL TRANSCRIPT PAGE 2333, LINES 6 THROUGH 12.

09:52:56 17 Q. MS. ELSTEN, YOU SAID THAT YOU WERE IN THE COURTROOM WHEN
09:53:00 18 CHRIS SUMMERS TESTIFIED, CORRECT?

09:53:03 19 A. CORRECT.

09:53:03 20 Q. AND YOU RECALL THAT HE'S THE ARISTA SYSTEMS ENGINEER
09:53:09 21 RESPONSIBLE FOR THE FACEBOOK ACCOUNT?

09:53:11 22 A. CORRECT.

09:53:12 23 Q. AND I JUST WANT TO DIRECT YOUR ATTENTION TO SOME OF THE --
09:53:18 24 A TRANSCRIPT OF SOME OF THE TESTIMONY THAT YOU HEARD FROM
09:53:20 25 MR. SUMMERS.

THIS WAS IN THE CONTEXT OF QUESTIONS ABOUT AUTOMATION AND SCRIPTS. HE WAS ASKED?

"QUESTION: DOES THE FAMILIARITY OF THE COMMANDS HELP IN THAT SITUATION IN WRITING THE SCRIPTS?

"ANSWER: IT'S MORE OF A -- YOU BUILD IT ONCE AND THEN FORGET ABOUT IT. AND I CAN'T SPEAK FOR THE OTHERS, BUT IN THE CASE OF ARISTA, OFTEN TIMES THEY ARE CONSULTING WITH US AS TO WHAT COMMANDS THEY SHOULD INCLUDE IN THOSE SCRIPTS AND SOFTWARE, PIECES OF SOFTWARE CODE."

NOW, DID YOU HEAR MR. SUMMERS GIVE THAT TESTIMONY?

A. I DID.

Q. DID YOU HAVE AN UNDERSTANDING AS TO WHETHER THE FACT THAT CLI COMMANDS MAY OR MAY NOT BE USED IN AN AUTOMATED SCRIPT, MAKES THE FAMILIARITY OF THOSE COMMANDS TO A HUMAN OPERATOR, MATTER, IN THE WAY THAT IT MIGHT MATTER TO A NON-HIGHLY AUTOMATED CUSTOMER?

A. MY UNDERSTANDING IS THERE'S A DISTINCTIVENESS THAT, WITH RESPECT TO THE WRITING OF THE AUTOMATED COMMANDS, IT'S FAR, FAR LESS IMPORTANT THAN IT IS IF YOU WOULD THEORETICALLY HAVE AN OPERATOR SITTING DOWN AND EXECUTING WHAT THE AUTOMATION DOES MANUALLY.

Q. OKAY.

MR. SILBERT: AND JEFF, WOULD YOU PLEASE DISPLAY MS. ELSTEN'S SLIDE 41.

Q. COULD YOU PLEASE REMIND US, MS. ELSTEN, SINCE THIS WAS

09:55:04 1 YESTERDAY WHEN WE DISCUSSED THIS, OR TWO DAYS AGO, WHAT IS IT
09:55:09 2 THAT'S BEING SHOWN ON THIS SLIDE?

09:55:11 3 A. OKAY. THIS IS AN EXCERPT FROM A MICROSOFT REQUEST FOR
09:55:15 4 PROPOSAL, WHERE MICROSOFT LAID OUT DOZENS, I THINK, WELL OVER A
09:55:22 5 HUNDRED, FACTORS OR FEATURES THAT IT WANTED IN A SWITCH. AND
09:55:29 6 THEN IT ASSIGNED A POINT VALUE TO EACH OF THOSE FEATURES OR
09:55:34 7 FACTORS, AND EACH POINT VALUE INDICATED SOMETHING IN TERMS OF
09:55:42 8 HOW IMPORTANT THAT FEATURE WAS TO MICROSOFT.

09:55:50 9 Q. AND WHAT DID THEY INDICATE, IN PARTICULAR, WITH RESPECT TO
09:55:53 10 THE ITEM FAMILIAR COMMAND-LINE INTERFACE; WHAT DID MICROSOFT
09:55:56 11 INDICATE?

09:55:56 12 A. MICROSOFT GAVE THAT A WEIGHT OF 100, AND ELSEWHERE IN THE
09:56:00 13 DOCUMENT IT DEFINES ANYTHING FROM 1 TO 599 AS SOMETHING THEY
09:56:08 14 CALLED AN INFORMATIONAL REQUEST, FEATURES WE HAVE NO PARTICULAR
09:56:13 15 PLANS TO USE.

09:56:14 16 Q. THANK YOU.

09:56:16 17 A. SO THEY ARE ESSENTIALLY DESCRIBING A FAMILIAR COMMAND-LINE
09:56:21 18 INTERFACE AS SOMETHING THEY HAD NO PARTICULAR PLAN TO USE.

09:56:23 19 Q. AND I DON'T WANT TO ASK YOU TO REVIEW ALL THE EVIDENCE YOU
09:56:28 20 REVIEWED IN YOUR TESTIMONY, BUT COULD YOU PLEASE SUMMARIZE, AT
09:56:32 21 A HIGH LEVEL, WHY IT IS YOU DON'T BELIEVE CISCO HAS PROVEN THAT
09:56:37 22 MICROSOFT WOULD NOT HAVE PURCHASED AN ARISTA SWITCH UNLESS THE
09:56:43 23 ARISTA SWITCH MIMICKED CISCO'S CLI IN SOME WAY.

09:56:49 24 A. YOU KNOW, I THINK TWO MAIN REASONS.

09:56:52 25 THIS DOCUMENT WAS CERTAINLY IMPORTANT. IT WAS CONSISTENT

09:56:55 1 WITH OTHER RECORD EVIDENCE THAT WE SAW IN THE CASE. AND BY
09:57:00 2 OTHER RECORD EVIDENCE, I'M MOSTLY TALKING ABOUT E-MAILS AND
09:57:04 3 OTHER COMMUNICATIONS BETWEEN ARISTA AND MICROSOFT.

09:57:11 4 AND BECAUSE IT'S CONSISTENT WITH WHAT WE SEE FROM OTHER
09:57:14 5 TYPES OF CUSTOMERS WITH SIMILAR DATA CENTER NEEDS.

09:57:19 6 Q. OKAY. WOULD YOU PLEASE LOOK AT EXHIBIT 648, WHICH MR. PAK
09:57:27 7 SHOWED YOU.

09:57:38 8 A. YES.

09:57:39 9 Q. AND THIS IS THE E-MAIL CHAIN BETWEEN MR. HOLBROOK AND ADAM
09:57:48 10 SWEENEY, AND IT SAYS AT THE TOP, DO YOU HAVE ANY WORKING ON
09:57:55 11 THIS? THIS WAS ON BOTH MICROSOFT AND FACEBOOK'S WISH LIST,
09:58:02 12 IIRC.

09:58:03 13 I'M NOT SURE WHAT THAT STANDS FOR.

09:58:10 14 WHAT DO YOU UNDERSTAND MR. HOLBROOK TO BE TALKING ABOUT
09:58:12 15 WHEN HE SAYS, DO YOU HAVE ANYBODY WORKING ON THIS?

09:58:16 16 A. I THINK HE'S GENERALLY ASKING MR. SWEENEY WHETHER THERE
09:58:21 17 ARE ANY STAFF PEOPLE THAT ARE ADDRESSING THE ISSUE THAT HE GOES
09:58:25 18 ON TO TALK ABOUT.

09:58:26 19 Q. AND IN GENERAL, DO YOU HAVE AN UNDERSTANDING AS TO WHETHER
09:58:32 20 THE FACT THAT A CUSTOMER MIGHT MENTION A CLI COMMAND, DOES
09:58:38 21 THAT, BY ITSELF, INDICATE THAT THAT THE CUSTOMER WOULD REFUSE
09:58:42 22 TO BUY AN ARISTA SWITCH UNLESS ARISTA ILLEGALLY COPIED CISCO'S
09:58:50 23 CLI?

09:58:51 24 A. NO, THAT WOULD BE QUITE A LEAP.

09:58:52 25 Q. AND COULD YOU EXPLAIN WHY?

09:58:54 1 A. WELL, WHEN THE FIRST REFERS TO A CLI COMMAND, GENERALLY,
09:58:59 2 AND I DISCUSSED THIS E-MAIL WITH A COUPLE OF PEOPLE, SO THIS
09:59:02 3 ONE I KNOW PRETTY WELL, THEY ARE TALKING ABOUT A FUNCTIONALITY,
09:59:08 4 THEY ARE TALKING ABOUT WHAT IT IS THAT THE COMMAND MAKES
09:59:13 5 HAPPEN, NOT THE COMMAND ITSELF.

09:59:17 6 SO THEY ARE REFERRING TO IT BY WHAT IT'S CALLED, BUT
09:59:23 7 THAT'S NOT INDICATING THAT WHAT YOU CALL IT IS IMPORTANT.

09:59:29 8 SO IF YOU WANT AN APPLE, YOU CAN CALL IT AN APPLE, OR IF
09:59:32 9 YOU'RE FRENCH YOU CAN CALL IT A POMME, OR YOU KNOW, BUT WHAT
09:59:36 10 YOU WANT IS THE APPLE.

09:59:38 11 WHAT YOU CALL IT IS INCIDENTAL, I GUESS THAT'S THE BEST
09:59:51 12 WAY I COULD THINK OF TO PUT IT.

09:59:53 13 Q. WOULD YOU LOOK AT PLEASE, EXHIBIT 6677 WHICH IS SOMETHING
09:59:58 14 THAT MR. PAK ALSO REVIEWED WITH YOU.

10:00:02 15 I WANT TO DIRECT YOUR ATTENTION TO PAGE 13 OF THE
10:00:07 16 ATTACHMENT. IT'S THE PAGE HE SHOWED YOU.

10:00:25 17 A. OKAY.

10:00:26 18 Q. ONE MOMENT, I'M SORRY.

10:00:47 19 MR. SILBERT: JEFF, IT'S THE PAGE THAT HAS PROTOCOLS
10:00:52 20 AND FEATURES SETS AT THE TOP.

10:00:59 21 Q. IF YOU GO TO KIND OF THE -- THE BULLET POINT THAT'S THERE
10:01:03 22 TOWARDS THE BOTTOM OF THE SCREEN THAT SAYS, "DOCUMENTATION ON
10:01:07 23 CLI SHOW COMMANDS?"

10:01:09 24 DO YOU RECALL THAT MR. PAK REVIEWED THAT LANGUAGE WITH
10:01:12 25 YOU?

10:01:13 1

A. YES.

10:01:14 2

Q. AND YOU POINTED OUT THE WORDS OR EQUIVALENT IN THE

10:01:22 3

PARENTHESES, DO YOU SEE THAT?

10:01:26 4

A. YES.

10:01:26 5

Q. SO WHAT THIS SAYS IS, THAT PARTICULAR SENTENCE, FOR

10:01:29 6

EXAMPLE, IF A "SHOW IP BGP NEIGHBOR ROUTES," AND THEN IT SAYS

10:01:39 7

"(OR EQUIVALENT)COMMAND IS USED, DOES THE OUTPUT REPRESENT

10:01:46 8

BGP," AND IT GOES ON WITH SOME TECHNICAL INFORMATION; DO YOU

10:01:48 9

SEE THAT?

10:01:49 10

A. YES.

10:01:50 11

Q. WHAT'S THE SIGNIFICANCE, IN YOUR MIND OF THE WORDS, "OR

10:01:53 12

EQUIVALENT" IN THE PARENTHESES AFTER THE QUOTED CLI COMMAND?

10:01:58 13

A. MY UNDERSTANDING WOULD BE THAT IT MEANS YOU DON'T HAVE TO

10:02:06 14

HAVE THAT EXACT THING, YOU CAN HAVE SOMETHING SIMILAR OR

10:02:10 15

SOMETHING EQUIVALENT.

10:02:13 16

Q. THANK YOU. YOU CAN PUT THAT ASIDE.

10:02:21 17

YOU WERE ASKED ABOUT WIDESPREAD USE OF CLI COMMANDS?

10:02:27 18

A. YES.

10:02:28 19

MR. SILBERT: COULD WE LOOK, JEFF, AT SLIDE 71 FROM

10:02:34 20

MS. ELSTEN'S SLIDE DECK.

10:02:40 21

Q. THIS IS SOMETHING WE REVIEWED YESTERDAY. COULD YOU JUST

10:02:44 22

REMIND THE JURY WHAT'S BEING SHOWN HERE?

10:02:47 23

A. OKAY. THIS DOCUMENT, I WANT TO SAY IT WAS FROM 2007.

10:02:51 24

IT'S FROM, LIKE A TECH NEWS LETTER KIND OF THING CALLED

10:02:58 25

NETWORK WORLD.

10:03:00 1 AND WHAT IT SAYS THAT'S OF INTEREST HERE IS THAT CISCO'S
10:03:05 2 CLI HAS BECOME STANDARD IN THE INDUSTRY, WHICH MANY HARDWARE
10:03:10 3 VENDORS COPY AND PROMOTE WHEN TRYING TO GET INTO CISCO
10:03:13 4 ACCOUNTS.

10:03:14 5 Q. AND DID YOU, IN YOUR OWN REVIEW OF THE RECORD, SEE
10:03:19 6 EVIDENCE OF WIDESPREAD USE OF CISCO CLI COMMANDS?

10:03:24 7 A. WITH RESPECT TO SWITCHES, YES. AND WE LOOKED AT SOME OF
10:03:28 8 THE DOCUMENTS THAT I SAW, I THINK WE LOOKED AT A COUPLE OF
10:03:33 9 EXAMPLES, BUT DELL PROMOTES ITSELF AS BEING CISCO-LIKE, HP
10:03:39 10 DOES, BROCADE DOES, NETGEAR DOES. FOR MAJOR PLAYERS IN THE
10:03:47 11 SWITCH INDUSTRY, YOU ARE EITHER IOS-LIKE/CISCO-LIKE OR YOU ARE
10:03:53 12 JUNOS.

10:03:55 13 NOW, THERE ARE SMALLER PLAYER THAT IS HAVE THEIR OWN
10:04:03 14 CLI'S, BUT YOU ARE EITHER, WHEN IT SAYS "INDUSTRY STANDARD
10:04:06 15 CISCO-LIKE," IT MEANS YOU ARE A TYPE. IT MEANS, FOR SWITCHES,
10:04:11 16 DIFFERENT FROM JUNOS, LIKE SORT OF EVIDENCE ELSE, EXCEPT FOR
10:04:16 17 SOME MINOR PLAYERS.

10:04:17 18 MR. SILBERT: THANK YOU.

10:04:18 19 I HAVE NO FURTHER QUESTIONS.

10:04:19 20 THE COURT: MR. PAK, ANYTHING ELSE FOR MS. ELSTEN?

10:04:22 21 MR. PAK: YES, I HAVE A FEW FOLLOW UP QUESTIONS.

10:04:25 22 THE COURT: OKAY.

10:04:27 23 **RECROSS-EXAMINATION**

10:04:27 24 BY MR. PAK:

10:04:28 25 Q. YOU TALKED ON EXAMINATION BY MR. SILBERT REGARDING WHETHER

10:04:33 1 HAVING A CISCO CLI OR A CISCO-LIKE CLI WAS IMPORTANT TO

10:04:40 2 AUTOMATION CUSTOMERS OR NOT; DO YOU RECALL THAT?

10:04:42 3 A. YOU MEAN A COUPLE OF DAYS AGO?

10:04:45 4 Q. OR JUST NOW.

10:04:46 5 A. OKAY. YEAH.

10:04:48 6 Q. YOU CONSIDERED THE TESTIMONY OF MR. KEN DUDA IN FORMING

10:04:52 7 YOUR OPINIONS IN THIS CASE, CORRECT?

10:04:53 8 A. YES.

10:04:54 9 Q. AND YOU BELIEVE THAT HE'S A CREDIBLE SOURCE OF INFORMATION

10:04:56 10 RELATING TO THE USE OF CLI AND THE IMPORTANCE OF CLI, CORRECT?

10:05:01 11 A. YEAH, I WOULD SAY SO.

10:05:02 12 Q. HE'S THE CHIEF TECHNOLOGY OFFICER OF ARISTA; RIGHT?

10:05:05 13 A. YEAH.

10:05:05 14 Q. SO LET'S LOOK AT --

10:05:07 15 A. SO, I GUESS I KIND OF, BECAUSE HE'S NOT A MARKETING

10:05:11 16 PERSON, HE'S A TECHNICAL PERSON. BUT YES, I THINK YOU KNOW,

10:05:15 17 WITHIN HIS FIELD OF EXPERTISE HE'S AWARE OF THE THINGS THAT YOU

10:05:18 18 MENTIONED.

10:05:18 19 Q. OKAY. SO LET'S TAKE A LOOK AT HIS DEPOSITION TESTIMONY.

10:05:22 20 THIS IS SLIDE 27.

10:05:25 21 SO HERE'S THE TESTIMONY THAT MR. KEN DUDA, THE CTO, GAVE,

10:05:30 22 IN HIS DEPOSITION TRANSCRIPT, FEBRUARY 12TH, PAGE 174, LINE 19

10:05:35 23 TO PAGE 175, LINE 13.

10:05:37 24 "QUESTION: FOR NEW CUSTOMERS, IF ARISTA WAS NOT

10:05:41 25 ALLOWED TO OFFER A CLI THAT HAD A SUBSTANTIAL OVERLAP IN CLI

10:05:45 1 COMMANDS WITH ARISTA CLI, WHAT WOULD YOUR SENSE OF THE IMPACT
10:05:49 2 BE?

10:05:50 3 "ANSWER: I THINK IT DEPENDS A LOT BASED ON THE
10:05:54 4 CUSTOMER. SOME CUSTOMERS HAVE MADE HEAVY INVESTMENTS IN
10:05:58 5 TOOLING AND AUTOMATION AROUND THE INDUSTRY STANDARD COMMAND
10:06:02 6 SET, WHICH LARGELY OVERLAPS CISCO.

10:06:05 7 IF WE WEREN'T ABLE TO USE ANY OF THOSE COMMANDS FOR THAT
10:06:09 8 TYPE OF CUSTOMER, IT WOULD BE A LARGER IMPEDIMENT."

10:06:12 9 DO YOU SEE THAT TESTIMONY?

10:06:15 10 A. YES.

10:06:15 11 Q. YOU ARE NOT DISPUTING THAT TESTIMONY?

10:06:16 12 A. NO, YOU HAVE TO READ IT CAREFULLY, BUT I'M NOT DISPUTING
10:06:20 13 IT.

10:06:21 14 Q. AND HE'S TALKING ABOUT TOOLING AND AUTOMATION AROUND THE
10:06:27 15 INDUSTRY IN THAT, CORRECT?

10:06:28 16 A. AROUND THE INDUSTRY STANDARD.

10:06:29 17 Q. THAT LARGELY OVERLAPS WITH CISCO, CORRECT?

10:06:32 18 A. YES.

10:06:33 19 Q. SO HE'S TALKING ABOUT AUTOMATION CUSTOMERS, CORRECT?

10:06:36 20 A. WELL, YEAH, BUT YOU HAVE TO KIND OF GO ON AND READ THE
10:06:39 21 REST OF THE TESTIMONY.

10:06:40 22 Q. LET'S GO TO SLIDE 32.

10:06:45 23 ANOTHER ARISTA EMPLOYEE OR EXECUTIVE THAT YOU RELIED ON
10:06:48 24 WAS MR. ANSHUL SADANA, CORRECT?

10:06:52 25 A. YES.

10:06:53 1 Q. HE'S THE CHIEF CUSTOMER OFFICER, SO HE WOULD KNOW
10:06:56 2 SOMETHING ABOUT HOW CUSTOMERS INTERACT WITH ARISTA, CORRECT?

10:06:58 3 A. I DID -- HE IS.

10:07:01 4 Q. SO LET'S TAKE A LOOK AT HIS DEPOSITION TESTIMONY,
10:07:06 5 MARCH 17, 2016, PAGE 81, LINE 5 TO 12.

10:07:12 6 "QUESTION: BUT THAT WAS YOUR BELIEF AT THE TIME,
10:07:15 7 THAT'S WHY YOU CALLED IT A CHECK MARK, CORRECT?

10:07:17 8 "ANSWER: I CERTAINLY VIEWED IT AS A BARRIER TO
10:07:20 9 ENTRY.

10:07:21 10 "QUESTION: YOU VIEWED HAVING AN IOS-LIKE CLI AS A
10:07:25 11 BARRIER TO ENTERING INTO THE SWITCH MARKET FOR ARISTA, TRUE?

10:07:29 12 "ANSWER: YES."

10:07:30 13 THAT WAS HIS SWORN TESTIMONY, CORRECT?

10:07:32 14 A. WELL, IN PART. YOU REALLY HAVE TO READ THAT IN CONTEXT.

10:07:35 15 Q. AND YOU ARE NOT DISPUTING THIS TESTIMONY, CORRECT?

10:07:38 16 A. I'M DISPUTING THAT THIS TESTIMONY IS REPRESENTATIVE OF
10:07:40 17 WHAT HE HAD TO SAY ON THE SUBJECT. I'M CERTAINLY NOT DISPUTING
10:07:44 18 THAT THIS WAS PART OF IT.

10:07:45 19 Q. QUICKLY HERE, YOU ALSO TALKED ABOUT THAT MICROSOFT
10:07:49 20 SPREADSHEET WHERE YOU WERE ADDING NUMBERS 100 TO 1,000; DO YOU
10:07:54 21 RECALL THAT?

10:07:56 22 YOU WERE ASKED SOME QUESTIONS FROM MR. SILBERT ABOUT THE
10:07:59 23 MICROSOFT SPREADSHEET WITH A POINT VALUE OF 100; DO YOU RECALL
10:08:05 24 THAT

10:08:05 25 A. WELL, YEAH. BUT THE POINT VALUE, THAT WAS MICROSOFT'S

10:08:10 1 POINT VALUE. YOUR QUESTION KIND OF IMPLIED YOU MIGHT THINK
10:08:13 2 THAT THAT WAS MINE.

10:08:13 3 Q. NO. MY MISTAKE.

10:08:15 4 A. OH, OKAY.

10:08:16 5 Q. YOU UNDERSTAND THAT THERE WAS A DOCUMENT THAT WAS SHOWN TO
10:08:18 6 YOU WITH SOME NUMBERS THAT WERE PROVIDED BY MICROSOFT, CORRECT?

10:08:22 7 A. CORRECT.

10:08:23 8 Q. AND BUT YOU UNDERSTAND, MS. ELSTEN, THAT WHEN ARIFF
10:08:27 9 PREMJI, ARISTA'S EMPLOYEE, WAS ASKED ABOUT THAT DOCUMENT -- AND
10:08:30 10 LET'S PUT UP SLIDE 38.

10:08:31 11 HE TESTIFIED, AS YOU CAN SEE HERE, THAT YOU DON'T TOTAL UP
10:08:39 12 THESE POINT VALUES AND DO ANYTHING WITH A TOTAL POINT VALUE?
10:08:43 13 "NO, NOT THAT I CAN RECOLLECT. I DON'T THINK THAT THIS IS SORT
10:08:48 14 OF AN EVALUATION BASED UPON THE AGGREGATE SUM OF THESE
10:08:51 15 FEATURES."

10:08:52 16 DO YOU SEE THAT TESTIMONY?

10:08:53 17 A. YES.

10:08:53 18 Q. SO HERE'S MR. PREMJI, WHO IS AN ARISTA EMPLOYEE WHO KNOWS
10:08:57 19 ALL ABOUT IS THAT DOCUMENT, AND HE SAYS YOU DON'T ADD UP THOSE
10:09:00 20 NUMBERS, CORRECT?

10:09:00 21 A. WELL, HE SAYS THEY DON'T DO IT FOR ANY PURPOSE, THAT
10:09:04 22 DOESN'T MEAN IT CAN'T BE DONE FOR A DIFFERENT KIND OF ANALYSIS.

10:09:07 23 Q. BUT YOU DID ADD UP THOSE NUMBERS, CORRECT?

10:09:10 24 A. WELL, OKAY, I DID TWO THINGS.

10:09:13 25 I TOOK THE DOCUMENT AT FACE VALUE FOR WHAT IT SAID.

10:09:17 1 THAT'S WHAT I WOULD CALL QUALITATIVE POINT. AND THEN WE DID
10:09:20 2 ADD UP THE TOTAL POINTS TO GET AN ADJUSTMENT FACTOR.

10:09:26 3 MR. SILBERT: FINALLY LET'S GO TO EXHIBIT 648,
10:09:28 4 MR. FISHER.

10:09:36 5 Q. YOU WERE ASKED, WHAT DID MR. HOLBROOK MEAN WHEN YOU SAY,
10:09:39 6 "DO YOU HAVE ANYONE WORKING ON THIS? THIS WAS ON BOTH
10:09:42 7 MICROSOFT AND FACEBOOK'S WISH LIST."

10:09:44 8 DO YOU RECALL THAT?

10:09:45 9 A. I DO.

10:09:46 10 Q. CAN YOU LOOK AT THE TITLE, THE SUBJECT OF THIS E-MAIL.
10:09:49 11 THE SUBJECT OF THE E-MAIL IS REGARDING "SHOW PLATFORM HARDWARE
10:09:54 12 CAPACITY?"

10:09:55 13 YOU UNDERSTAND THAT'S A CLI COMMAND, CORRECT?

10:09:58 14 A. YES.

10:09:59 15 MR. PAK: NO MORE QUESTIONS.

10:10:00 16 THE COURT: THANK YOU.

10:10:01 17 MR. SILBERT, ANYTHING ELSE?

10:10:02 18 MR. SILBERT: JUST VERY, VERY BRIEFLY.

10:10:07 19 JEFF, IF YOU COULD PLEASE DISPLAY SLIDE 35 FROM
10:10:12 20 MS. ELSTEN'S SLIDES.

10:10:04 21 **FURTHER REDIRECT EXAMINATION**

10:10:06 22 BY MR. SILBERT:

10:10:19 23 Q. MS. ELSTEN, THIS IS SOMETHING YOU REVIEWED WHEN WE WERE IN
10:10:23 24 COURT ON WEDNESDAY, WHAT IS IT THAT'S BEING SHOWN IN THIS
10:10:26 25 SLIDE?

10:10:26 1
10:10:32 2
10:10:40 3
10:10:46 4
10:10:49 5
10:10:50 6
10:10:51 7
10:10:52 8
10:10:54 9
10:10:55 10
10:10:56 11
10:10:56 12
10:10:58 13
10:11:01 14
10:11:02 15
10:11:04 16
10:11:07 17
10:11:08 18
10:11:09 19
10:11:29 20
10:11:31 21
10:11:35 22
10:11:35 23
10:11:35 24
10:11:35 25

A. THIS IS AN EXCERPT FROM DR. DUDA'S TRIAL TESTIMONY.

Q. AND IF YOU WERE TO TAKE DR. DUDA AT HIS WORD IN THIS TESTIMONY, WHAT WOULD YOU CONCLUDE ABOUT WHETHER OR NOT CLOUD CUSTOMERS GENERALLY CARED ABOUT THE DETAILS OF THE CLI COMMANDS THAT ARE USED?

A. THAT THEY DO NOT.

MR. SILBERT: THANK YOU.

MR. PAK: NO MORE QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU.

MAY MS. ELSTEN BE EXCUSED?

MR. PAK: YES.

THE COURT: MS. ELSTEN, THANK YOU FOR YOUR TESTIMONY. YOU MAY STEP DOWN.

THE WITNESS: THANK YOU.

THE COURT: MR. VAN NEST?

MR. VAN NEST: MR. FERRALL WILL CALL OUR NEXT WITNESS, YOUR HONOR.

THE COURT: AND WHO WILL THAT BE?

MR. VAN NEST: THAT WILL BE ANSHUL SADANA.

THE COURT: MR. SADANA, IF YOU WOULD COME FORWARD TO THE WITNESS STAND PLEASE AND STAND TO BE SWORN.

THE CLERK: PLEASE BE SEATED.

(DEFENDANT'S WITNESS, ANSHUL SEDANA, WAS SWORN.)

THE WITNESS: YES.

///

DIRECT EXAMINATION

BY MR. FERRALL:

Q. GOOD MORNING, MR. SADANA.

A. GOOD MORNING.

Q. YOU ARE HERE FOR YOUR SECOND APPEARANCE?

A. THAT'S RIGHT.

Q. IF YOU COULD, PLEASE REINTRODUCE YOURSELF TO THE JURY.

A. I'M ANSHUL SADANA. I'M THE CHIEF CUSTOMER OFFICER AT ARISTA.

Q. AND WHAT ARE YOUR RESPONSIBILITIES AS CHIEF CUSTOMER OFFICER?

A. MYSELF AND MY TEAM ARE RESPONSIBLE FOR DEFINING OUR PRODUCT REQUIREMENTS SELLING OUR PRODUCTS TO OUR CUSTOMERS AND SUPPORTING THEM GLOBALLY.

Q. AND HOW LONG HAVE YOU BEEN AT ARISTA?

A. I HAVE NOW BEEN THERE OVER NINE YEARS.

Q. MR. SADANA, YOU WILL EXCUSE ME THAT I'M GOING TO GO STRAIGHT TO THE SUBSTANCE. WE HAVE BEEN HERE FOR A LONG TIME AND LET'S JUST GET RIGHT TO THE POINT.

THERE'S BEEN A LOT OF TALK IN THIS TRIAL ABOUT CLOUD NETWORKING. AND WHAT I WOULD LIKE TO ASK YOU TO DO IS PLEASE EXPLAIN TO THE JURY THE DIFFERENCE BETWEEN CLOUD NETWORKING AND TRADITIONAL NETWORKING.

A. SURE. LET'S START WITH TRADITIONAL LEGACY NETWORKING. IN TRADITIONAL NETWORKING, YOU JUST HAVE A FEW SERVERS

1 SUPPORTING YOUR APPLICATION. SO MAYBE YOU ARE CHECKING YOUR
2 E-MAIL, SO YOUR REQUEST, IT GOES TO ONE SERVER.

3 IN CLOUD NETWORKING, THE APPLICATIONS WORK DIFFERENTLY.
4 FOR EXAMPLE, FACEBOOK OR GOOGLE OR AMAZON OR MICROSOFT, WHEN
5 YOU BUILD A CLUSTER OF SERVERS, ALL THE SERVERS WORK AS ONE
6 LARGE COMPUTER. YOU COULD HAVE MORE THAN 100,000 SERVERS
7 ACTING AS ONE TO GIVE YOU RESULTS BACK.

8 Q. CAN YOU GIVE THE JURY AN EXAMPLE OF HOW, WITH CLOUD
9 NETWORKING COMPANIES, THESE THOUSANDS OR HUNDRED THOUSANDS OF
10 SERVERS WORK TOGETHER?

11 A. SURE. LET'S TAKE FACEBOOK AS AN EXAMPLE.

12 WHEN WE, AS INDIVIDUALS, USE FACEBOOK, YOU SEND A REQUEST
13 TO LOG IN TO THE PAGE. THAT ONE REQUEST RESULTS IN MORE THAN
14 5,000 LOOK UPS WITHIN THE FACEBOOK DATA CENTER.

15 SO ALL THE SERVERS ARE TALKING TO EACH OTHER, AND VERY
16 QUICKLY YOU GET A RESPONSE BACK TELLING YOU WHO YOUR FRIENDS
17 ARE, WHAT ARE THEIR UPDATES, THEIR COMMENTS, ADVERTISEMENTS AND
18 SO ON. ALL IN LESS THAN ONE SECOND.

19 THAT'S ONLY POSSIBLE WHEN ALL THESE SERVERS, THOUSANDS OF
20 SERVERS TALK TO EACH OTHER ON THE BACKSIDE. FOR EVERY ONE
21 PACKET YOU SEND IN, MORE THAN 99 PERCENT OF THEIR TRAFFIC,
22 FACEBOOK'S TRAFFIC IS ACTUALLY WITHIN THEIR DATA CENTERS
23 BETWEEN THOSE SERVERS. INTERCONNECTING THESE SEARCHERS IS WHAT
24 WE CALL CLOUD NETWORKING.

25 MR. FERRALL: OKAY. IF WE COULD PULL UP SLIDE 5,

10:14:51 1 MR. DAHM, FROM MR. SADANA'S DEMONSTRATIVES.

10:14:54 2 Q. MR. SADANA, IF YOU COULD USE THIS TO HELP EXPLAIN THE
10:14:58 3 CHALLENGE OF PERFORMING THAT CLOUD NETWORKING FUNCTION IN A
10:15:04 4 TRADITIONAL NETWORKING ENVIRONMENT.

10:15:07 5 A. ABSOLUTELY.

10:15:09 6 IN THIS DIAGRAM, EACH OF THE SMALL BLOCKS AT THE BOTTOM IS
10:15:16 7 A GROUP OF ABOUT 500 SERVERS. SO IN TRADITIONAL NETWORKING,
10:15:19 8 YOU WOULD CONNECT THESE 500 NETWORKING SERVERS WITH JUST ONE
10:15:23 9 MORE LAYER OF SWITCHES TO AGGREGATE THEM TOGETHER.

10:15:31 10 BUT AS YOU SCALE OUT THE CLUSTER, YOU TAKE A BLOCK OF 500
10:15:35 11 SERVERS AND ANOTHER 500, YOU CONNECT IT TOGETHER WITH ONE MORE
10:15:38 12 LAYER OF SWITCHES, WHICH IS THE SECOND LAYER OF SWITCHES OVER
10:15:41 13 HERE ON NUMBER TWO.

10:15:42 14 THEN YOU TAKE THESE THOUSAND SERVERS AND ANOTHER THOUSAND
10:15:44 15 SERVERS AND CONNECT THEM TOGETHER WITH ONE MORE LAYER OF
10:15:48 16 SWITCHES, WHICH IS THE LAYER NUMBER THREE.

10:15:50 17 THEN YOU TAKE 2000 SERVERS AND ANOTHER THOUSAND AND
10:15:55 18 CONNECT THEM TOGETHER WITH A FOURTH LAYER OF SWITCHES.

10:15:57 19 AND THIS RESULTS WITH A LARGE VERY EXPENSIVE HIERARCHICAL
10:16:00 20 NETWORK. AND WITH CLOUD NETWORKING, WE CAN FLATTEN ALL OF THIS
10:16:04 21 BY COLLAPSING THESE LAYERS INTO JUST TWO LAYERS OF SWITCHES,
10:16:07 22 THE TOP OF RACK AND THE SPINE, THAT ALLOWS YOU TO SIGNIFICANTLY
10:16:10 23 LOWER YOUR COST, BUT IT ALSO GIVES YOU THE PERFORMANCE TO
10:16:14 24 INTERCONNECT ALL YOUR SERVERS TOGETHER TO SERVE THESE
10:16:17 25 APPLICATIONS.

10:16:18 1 Q. OKAY. I WOULD LIKE TO GO BACK TO THE -- WELL, IF YOU
10:16:23 2 COULD LOOK AT EXHIBIT 8197 IN YOUR BINDER, MR. SADANA.

10:16:30 3 A. SURE.

10:16:30 4 Q. WHAT IS THAT?

10:16:31 5 A. THIS IS NETWORK DESIGN I HAVE DONE FOR MICROSOFT AZURE IN
10:16:37 6 THE 2009 TIMEFRAME.

10:16:40 7 MR. FERRALL: YOUR HONOR, I WOULD MOVE 8197 IN
10:16:43 8 EVIDENCE.

10:16:43 9 THE COURT: ANY OBJECTION?

10:16:44 10 MR. NELSON: I DON'T KNOW WHO DREW IT.

10:16:47 11 MR. FERRALL: MR. SADANA, WHO DREW 8197?

10:16:50 12 THE WITNESS: I DREW THIS MYSELF.

10:16:53 13 MR. NELSON: IT'S OKAY, YOUR HONOR.

10:16:54 14 THE COURT: ALL RIGHT. IT WILL BE ADMITTED.

10:16:56 15 (DEFENDANT'S EXHIBIT 8197 WAS ADMITTED INTO EVIDENCE.)

10:16:56 16 BY MR. FERRALL:

10:17:01 17 Q. SO THIS IS A LITTLE BIT LOW TECH FOR A HIGH-TECH ISSUE,
10:17:05 18 BUT CAN YOU TELL ME, MR. SADANA, WHAT YOU DREW HERE IN 2009 FOR
10:17:12 19 MICROSOFT.

10:17:12 20 A. IN 2009, MICROSOFT WAS LOOKING FOR A DESIGN TO
10:17:17 21 INTERCONNECT 4,000 COMPUTER SERVERS ON THE LEFT SIDE, YOU SEE
10:17:21 22 THAT AT THE BOTTOM, AND 500 STORAGE NODES, STORAGE SERVERS,
10:17:27 23 TOGETHER IN ONE LARGE CLUSTER.

10:17:30 24 THIS ALLOWED THEM TO FORM MICROSOFT AZURE WHICH IS WHERE
10:17:33 25 MANY COMPANIES NOW STORED THEIR FILES.

10:17:35 1 Q. AND LET ME ASK YOU TO EXPLAIN THAT BECAUSE WE ALL KNOW
10:17:39 2 MICROSOFT. BUT EXPLAIN, AGAIN, WHAT'S MICROSOFT AZURE?

10:17:44 3 A. SURE.

10:17:46 4 MICROSOFT IS A FAIRLY LARGE COMPANY, AND FOR DECADES THEY
10:17:49 5 WERE SELLING WINDOWS AND RELATED SOFTWARE. BUT STARTING IN THE
10:17:55 6 2008/2009 TIMEFRAME, THEY STARTED A CLOUD GROUP CALLED AZURE.

10:17:59 7 AND WHAT THAT APPLICATION OR GROUP DOES IS THEY BUILD
10:18:02 8 LARGE DATA CENTERS AND THEY HOST THE APPLICATIONS FROM MANY
10:18:08 9 ENTERPRISES, HUNDREDS OF THOUSANDS OF COMPANIES STORING THEIR
10:18:11 10 DATA IN THE CLOUD AS WELL AS RUNNING THEIR APPLICATIONS IN THE
10:18:16 11 CLOUD.

10:18:16 12 SO MICROSOFT IS A VERY BIG PLAYER IN THIS CLOUD SPACE, IN
10:18:19 13 THE CLOUD COMPUTING SPACE. THAT'S WHAT AZURE DOES.

10:18:23 14 Q. OKAY. SO IN 2009, YOU DREW THIS FOR MICROSOFT. AND WHAT
10:18:29 15 WAS THE POINT OF WHAT ARISTA HAD TO BRING TO MICROSOFT THAT YOU
10:18:32 16 THOUGHT WAS DIFFERENT?

10:18:33 17 A. THE COMPETITORS WERE OFFERING SIMILAR DESIGNS WITH SEVERAL
10:18:39 18 LAYERS IN THE NETWORK. ARISTA HAD THE LEAF SWITCHES AND THE
10:18:45 19 7500, WHICH YOU HAVE SEEN THE SPINE, THE FOUR BOXES IN THE
10:18:48 20 MIDDLE, THOSE WERE, AT THAT TIME, THE HIGHEST DENSITY SWITCHES
10:18:52 21 IN THE WORLD. THAT ALLOWED US TO BRING THIS NETWORK TO
10:18:56 22 MICROSOFT WHICH GAVE THEM COST SAVING AND A LOT OF POWER
10:19:01 23 SAVINGS, GIVEN THE LESSER EQUIPMENT THEY HAD TO USE.

10:19:03 24 Q. WHO WAS THE COMPETITION FOR THIS DEAL?

10:19:08 25 A. THE COMPETITION WAS PRIMARILY CISCO, CISCO WAS THE

10:19:12 1 INCUMBENT AT THE MICROSOFT AT THAT TIME, BUT DELL AND HP WERE
10:19:17 2 TRYING AS WELL, BUT THEY DID NOT HAVE SIGNIFICANT PRODUCTS AT
10:19:22 3 THAT TIME.

10:19:22 4 Q. AND WERE YOU ABLE TO WIN THIS DEAL IN 2009?

10:19:24 5 A. YES, WE WERE ABLE TO WIN THIS DEAL. THIS FIRST PROJECT
10:19:28 6 BECAME THE FOUNDATION OF OUR SUCCESS WITHIN MICROSOFT.

10:19:32 7 Q. AND CAN YOU SUMMARIZE, MR. SADANA, WHAT POINTS DID YOU
10:19:36 8 DRIVE HOME TO MICROSOFT ABOUT WHY ARISTA WOULD BE -- SHOULD BE
10:19:43 9 THE SWITCH OF CHOICE FOR THIS NEW DATA CENTER AZURE WAS
10:19:48 10 BUILDING?

10:19:48 11 A. AT THIS TIME, WE HAD 384 PORTS IN ONE SWITCH. THE
10:19:56 12 COMPETING PRODUCT FROM CISCO HAD ONLY 64 PORTS. SO WE COULD
10:19:59 13 COLLAPSE MULTIPLE LAYERS, AND IN THE END, THAT RESULTED IN A
10:20:04 14 SIGNIFICANT SAVING TO MICROSOFT.

10:20:07 15 IF I CAN SUMMARIZE IN A NUT SHELL, THE COST OF POWERING UP
10:20:12 16 THE CISCO GEAR FOR THIS DESIGN, AT THAT TIME, WAS MORE THAN THE
10:20:18 17 COST OF THE ARISTA PRODUCTS, THE COST OF POWERING THE ARISTA
10:20:22 18 PRODUCTS AND OPERATING IT FOR THREE YEARS.

10:20:25 19 SO JUST THE COST OF POWERING UP THE COMPETITOR PRODUCT WAS
10:20:28 20 SO HIGH THAT WE COULD BEAT THEM WITH THIS CONDENSED DESIGN.

10:20:32 21 Q. DID MICROSOFT REQUIRE A CISCO-LIKE CLI FOR THIS PROJECT?

10:20:38 22 A. NO, MICROSOFT DID NOT REQUIRE A CISCO-LIKE CLI.

10:20:42 23 Q. DID YOU PROMOTE THE SIMILARITY OF YOUR CLI TO CISCO'S IN
10:20:49 24 ATTEMPTING TO WIN THIS DEAL?

10:20:52 25 A. WE GENERALLY MENTION IT ON OUR SALES COLLATERAL, BUT THE

10:20:56 1 CLI WAS NOT A TOPIC OF DISCUSSION WITH MICROSOFT. THE FOCUS
10:21:00 2 WAS STORAGE IN AZURE TO BUILD THIS DESIGN.

10:21:02 3 Q. THERE'S BEEN SOME DISCUSSION, MR. SADANA, OF THE USE OF
10:21:06 4 AUTOMATION TOOLS BY CLOUD NETWORKING COMPANIES; ARE YOU
10:21:09 5 FAMILIAR WITH THAT, GENERALLY?

10:21:10 6 A. YES, I AM.

10:21:11 7 Q. AND HAVE YOU BECOME FAMILIAR AS PART OF YOUR DUTIES AT
10:21:15 8 ARISTA WITH THE NATURE OF AUTOMATION THAT YOUR CUSTOMERS DO
10:21:19 9 WITH ARISTA PRODUCTS?

10:21:20 10 A. YES, I DO.

10:21:22 11 Q. AND IF CLOUD COMPANIES WHO USE AUTOMATION, EMBED A CLI
10:21:32 12 COMMAND IN THE AUTOMATION TOOLS, DO YOU HAVE A SENSE ABOUT
10:21:37 13 WHETHER HAVING A FAMILIAR CLI COMMAND IS IMPORTANT TO THOSE
10:21:42 14 CUSTOMERS?

10:21:43 15 A. NO, IT'S CERTAINLY NOT. WHEN YOU EMBED A CLI COMMAND IN
10:21:49 16 AN AUTOMATION SOFTWARE, IT'S ONE COMPUTER PROGRAM TALKING TO
10:21:52 17 THE SWITCHES.

10:21:53 18 SO IT DOESN'T MATTER WHAT COMMAND YOU USE BECAUSE YOU ARE
10:21:56 19 NOT TRYING TO USE A FAMILIAR CLI WITH A HUMAN BEING. YOU COULD
10:21:59 20 HAVE ANYTHING IN THAT STRING AT THAT POINT AND THE PROGRAM WILL
10:22:03 21 STILL BE ABLE TO AUTOMATE THE NETWORK.

10:22:05 22 Q. MR. SADANA, GOING BACK TO THE 2009 TIMEFRAME, THE JURY HAS
10:22:09 23 HEARD SOME TESTIMONY FROM YOU FROM YOUR DEPOSITION. AND AMONG
10:22:13 24 THE THINGS THEY HEARD WAS THAT IN THAT TIMEFRAME, HAD ARISTA
10:22:18 25 ADOPTED A DIFFERENT CLI, IT WOULD HAVE ONLY BEEN ABLE TO SELL

10:22:25 1 ITS SWITCHES TO VERY FEW CUSTOMERS; DO YOU RECALL THAT
10:22:29 2 DEPOSITION TESTIMONY YOU GAVE?

10:22:30 3 A. YES, I DO.

10:22:31 4 Q. CAN YOU TELL THE JURY WHAT YOU HAD IN MIND WHEN YOU
10:22:34 5 PROVIDED THAT TESTIMONY?

10:22:36 6 A. IN 2008/2009 TIMEFRAME, WE HAD ONE COMPETITOR WHICH IS
10:22:42 7 CISCO, ENTRENCHED IN EVERY MAJOR ENTERPRISE.

10:22:47 8 AT THE SAME TIME, WE WERE MEETING WITH THE CLOUD
10:22:50 9 COMPANIES. WE HADN'T HAD ANY MAJOR WINS WITH THE COMPANIES AT
10:22:57 10 THAT TIME, BUT WE WERE MEETING WITH THEM.

10:22:59 11 WHEN I SAID VERY FEW COMPANIES, VERY FEW CUSTOMERS, WHAT I
10:23:03 12 MEANT WAS REFERRING TO ALL THESE CLOUD COMPANIES, THAT WAS NOT
10:23:07 13 OUR CAUSE, BUT THAT WAS EARLY ON IN THE LIFE OF OUR COMPANY.

10:23:10 14 Q. DID YOU HAVE CLOUD COMPANIES AS CUSTOMERS IN 2008/2009?

10:23:15 15 A. THEY HAD PURCHASED A FEW SWITCHES FOR THEIR LABS, BUT
10:23:19 16 THERE WAS NO DEPLOYMENT IN THE PRODUCTION DATA CENTERS.

10:23:22 17 Q. AND HOW MANY CUSTOMERS DID YOU HAVE IN TOTAL IN, LET'S
10:23:25 18 SAY, 2009?

10:23:26 19 A. AT THAT TIME FRAME, WE HAD ABOUT 100 TO 200 CUSTOMERS.

10:23:31 20 Q. HAVE YOU NOTICED ANY TRENDS IN THE NETWORKING INDUSTRY
10:23:35 21 SINCE 2009 RELATING TO HOW CUSTOMERS DESIRE A CISCO-LIKE CLI?

10:23:46 22 A. IN OUR EARLY DAYS, ESPECIALLY THE ENTERPRISE CUSTOMERS,
10:23:50 23 WOULD TALK ABOUT INDUSTRY STANDARD CLI OR FAMILIAR CLI, BUT THE
10:23:55 24 CLOUD COMPANIES HAVE GONE AHEAD AND AUTOMATED THE
10:23:57 25 INFRASTRUCTURE.

10:23:59 1 IF YOU LOOK AT OUR DATA CENTER FROM MICROSOFT OR FACEBOOK,
10:24:04 2 EACH FACILITY IS THE SIZE OF FOUR FOOTBALL FIELDS. NO HUMAN
10:24:08 3 BEING CAN PHYSICALLY GO AND CAN CONFIGURE ITS DEVICE, IT HAS TO
10:24:13 4 BE AUTOMATED.

10:24:14 5 BUT AS THESE CLOUD COMPANIES PUBLISHED THEIR WORK ON
10:24:17 6 INTERNET, ON CONFERENCES AND ON VIDEOS, NEWS SPREAD QUICKLY.

10:24:20 7 SO MANY MORE COMPANIES, TODAY, WANT TO AUTOMATE THEIR
10:24:24 8 INFRASTRUCTURES. AND THERE'S A TREND IN NETWORKING, THERE'S
10:24:27 9 BEEN A DRAMATIC CHANGE SINCE WE STARTED OUT, WHERE MORE
10:24:31 10 COMPANIES ARE AUTOMATING SOFTWARE-DEFINED NETWORKING TO CHANGE
10:24:34 11 THE WAY THEY OPERATE OR MANAGE THE NETWORK.

10:24:36 12 Q. DOES ARISTA STILL INTERACT WITH CUSTOMERS OR POTENTIAL
10:24:41 13 CUSTOMERS WHO SEEK A CISCO-LIKE CLI?

10:24:44 14 A. THERE ARE A FEW IN THE ENTERPRISE SPACE, EVEN TODAY.

10:24:48 15 Q. NOW IN 2009, THERE WAS A STUDY DONE BY MR. DAVE HEYMAN AT
10:25:00 16 ARISTA REGARDING USABILITY; ARE YOU FAMILIAR WITH THAT?

10:25:03 17 A. YES, I AM.

10:25:04 18 Q. AND WHAT WAS THE PURPOSE OF THAT STUDY?

10:25:09 19 A. THAT STUDY WAS DONE TO EDUCATE OUR SALES TEAM AND
10:25:15 20 CUSTOMERS THAT TRANSITIONING TO ARISTA PRODUCTS WAS NOT GOING
10:25:18 21 TO BE TOO HARD, THAT WAS GENERALLY A WAY CUSTOMERS WOULD HAVE
10:25:23 22 IF THEY WERE LOOKING AT NEW EQUIPMENT.

10:25:26 23 AND THAT USABILITY STUDY WAS DONE TO SHOW THAT IT IS
10:25:28 24 POSSIBLE, IT'S FAIRLY EASY FOR THEM TO TRANSITION TO THE ARISTA
10:25:32 25 PRODUCT.

10:25:33 1 ALL OUR OTHER COMPETITORS THAT WE ARE COMPETING WITH, HP,
10:25:37 2 BNT, FORCE10, WERE ALSO USING THE SAME KIND OF CLI. SO OUR
10:25:45 3 COMPETITORS WERE ALSO USING THE SAME TYPE OF CLI, SO OUR
10:25:50 4 USABILITY STUDY WAS DONE TO SHOW THAT WE WERE ALSO IN LINE WITH
10:25:54 5 THE INDUSTRY TREND.

10:25:55 6 Q. HAS ARISTA PREPARED SIMILAR USABILITY STUDIES SINCE 2009?

10:26:00 7 A. NO, AFTER THAT WE HAVE NOT DONE SUCH A STUDY.

10:26:06 8 Q. MR. SADANA, I WANT TO RETURN TO MICROSOFT.

10:26:09 9 MR. FERRALL: MR. DAHM, CAN YOU PULL UP EXHIBIT 4262,
10:26:12 10 PLEASE.

10:26:28 11 Q. MR. SADANA, DO YOU RECOGNIZE THIS AS AN E-MAIL THAT YOU
10:26:34 12 WERE COPIED ON?

10:26:35 13 A. YES, I DO.

10:26:36 14 Q. AND DO YOU KNOW MR. CALLAWAY?

10:26:39 15 A. YES, I DO.

10:26:40 16 Q. WHERE IS HE?

10:26:41 17 A. MR. CALLAWAY WORKS IN MY ORGANIZATION. HE'S ONE OF THE
10:26:46 18 SUPPORT ENGINEERS WE HAD ASSIGNED TO BE ON-SITE AT MICROSOFT AT
10:26:51 19 THAT TIME.

10:26:51 20 Q. AND IF WE COULD GO DOWN, MR. DAHM, TO THE BOTTOM HALF OF
10:26:55 21 THIS E-MAIL.

10:26:58 22 ARE YOU FAMILIAR WITH MR. MITCHELL?

10:27:01 23 A. YES, I AM.

10:27:02 24 Q. AND WHAT'S GNS?

10:27:05 25 A. SO MICROSOFT WAS SEPARATED INTO DIFFERENT GROUPS, AND

10:27:11 1 AZURE AND BING, WHICH ARE THE LARGE CLOUD PIECES OF MICROSOFT,
10:27:17 2 ARE SEPARATE. AND GNS WAS THE NETWORKING TEAM OPERATING THE
10:27:22 3 OTHER GROUPS WITHIN MICROSOFT AT THAT TIME.

10:27:24 4 Q. DO YOU RECALL THIS CORRESPONDENCE WITH MICROSOFT?

10:27:29 5 A. WHEN JUSTIN SENT IT TO ME, YES, I DO.

10:27:33 6 Q. CAN YOU EXPLAIN WHAT THE CONTEXT OF THIS CONVERSATION WAS
10:27:37 7 WITH MICROSOFT?

10:27:38 8 A. MICROSOFT WAS TRYING TO TURN ON IPV6 ON OUR PRODUCTS AT
10:27:41 9 THAT TIME. SO THEY WERE ASKING FOR IPV6-RELATED FUNCTIONALITY
10:27:45 10 THROUGH OUR JUSTIN AT THIS TIME.

10:27:49 11 Q. DID YOU UNDERSTAND MICROSOFT TO BE REQUESTING SPECIFIC
10:27:52 12 WORDS AND COMMANDS?

10:27:54 13 A. NO, THEY WERE ASKING FOR IPV6 FUNCTIONALITY, NOT SPECIFIC
10:27:58 14 WORDS AND COMMANDS AT THAT TIME.

10:28:03 15 Q. OKAY.

10:28:03 16 MR. FERRALL: YOU COULD PUT THAT DOWN, MR. DAHM.

10:28:06 17 Q. STICKING WITH MICROSOFT, WAS THERE ANOTHER WIN,
10:28:11 18 SUBSTANTIAL WIN AT MICROSOFT AFTER THE 20101 YOU TALKED ABOUT?

10:28:15 19 A. YES. WE DID WIN VERY LARGE PROJECT IN 2013 CALLED
10:28:21 20 MICROSOFT V14, IT WAS THEIR 2014 DESIGN.

10:28:26 21 Q. AND FOR WHAT PART OF MICROSOFT WAS THAT?

10:28:28 22 A. THAT WAS FOR MICROSOFT BING AND MICROSOFT AZURE, WHICH
10:28:32 23 WERE THE CLOUD TEAMS AT THAT TIME.

10:28:33 24 Q. CAN YOU GIVE SOME SENSE ABOUT WHAT THE SIZE OF THE NETWORK
10:28:39 25 WAS THAT MICROSOFT WAS SETTING UP IN ITS PROJECT?

10:28:43 1 A. SO THE BING 14 WE DESIGNED AND THE AZURE BING 14 WERE TO
10:28:49 2 CONNECT MORE THAN 200,000 SERVERS IN EACH CLUSTER. AND THE
10:28:54 3 TOTAL PROJECT WAS FOR INTERCONNECTING MORE THAN 1 MILLION
10:28:58 4 SERVERS IN SEVERAL DATA CENTERS THAT THEY WERE BUILDING.

10:29:02 5 Q. AND WHO WAS THE COMPETITION FOR THE DEAL IN 2013 OR 2014?

10:29:09 6 A. THE PRIMARY COMPETITOR WAS CISCO, ALTHOUGH HP AND THEY
10:29:14 7 WERE ALSO BUILDING PRODUCTS, BUT IT WAS REALLY BETWEEN US AND
10:29:17 8 CISCO.

10:29:18 9 Q. AND TO YOUR RECOLLECTION, WHAT WERE THE FACTORS THAT
10:29:23 10 AFFECTED THE OUTCOME OF THAT DEAL IN 2014?

10:29:29 11 A. SO THIS WAS IN 2013, IT'S CALLED V14. IN 2013, WE HAD A
10:29:38 12 PRODUCT THAT HAD THE WORLD'S HIGHEST DENSITY OF 40 GIGABIT
10:29:42 13 ETHERNET PORTS.

10:29:43 14 OUR COMPETITOR, CISCO, AT THAT TIME, DID NOT HAVE HIGH
10:29:49 15 DENSITY 40 GIGABIT ON THEIR PRODUCTS. SO THAT ONE FACTOR ALONE
10:29:53 16 RESULTED IN A WIN FOR US.

10:29:55 17 OF COURSE, EVERYTHING ELSE HAD TO WORK, BUT THE ONE SINGLE
10:30:06 18 FACTOR CONTRIBUTING FACTOR IS THE PORT DENSITY OF 40 GIG ON THE
10:30:12 19 ARISTA 7500 WAS THE NEXUS 7000, NEXUS 7000 DID NOT HAVE IT AT
10:30:16 20 THAT TIME, WE WERE ROUGHLY ONE YEAR AHEAD.

10:30:18 21 Q. AND THE NEXUS 7000 BEING THE CISCO, THE PRODUCT THAT WAS
10:30:23 22 IN COMPETITION FOR THIS DEAL?

10:30:24 23 A. THAT'S CORRECT.

10:30:25 24 Q. ALL RIGHT. LET ME ASK YOU ABOUT ONE MORE EVENT, AND THAT
10:30:31 25 IS FACEBOOK. THAT'S ANOTHER LARGE ARISTA CUSTOMER, CORRECT?

10:30:34 1 A. THAT'S CORRECT.

10:30:35 2 Q. CAN YOU TELL THE JURY ABOUT A DEAL WITH FACEBOOK OF
10:30:39 3 SIGNIFICANCE?

10:30:40 4 A. WITH FACEBOOK WE HAD A VERY LARGE, IT WAS THE END OF 2013,
10:30:46 5 EARLY 2014. AND IN MID-2013 FACEBOOK HAD ISSUED AN RFP TO
10:30:54 6 INTERCONNECT HUNDREDS OF THOUSANDS OF SERVERS TOGETHER IN A
10:30:57 7 SPECIFIC DESIGN.

10:30:58 8 Q. AND MR. SADANA, RFP IS A REQUEST FOR PROPOSAL?

10:31:01 9 A. THAT'S CORRECT. THIS WAS THEIR FORMAL REQUEST FOR
10:31:03 10 PROPOSAL FOR PRODUCTS AND COSTS AND TECHNICAL REQUIREMENTS.

10:31:08 11 AND WE SUBMITTED A RESPONSE AND WE CONDUCTED A POC, A
10:31:13 12 PROOF OF CONCEPT, WITH THE CUSTOMER IN THEIR LABS. AND THIS
10:31:20 13 WAS AROUND SEPTEMBER 2013. WE DID NOT DO THAT WELL.

10:31:25 14 Q. AND TO BE CLEAR, PROOF OF CONCEPT, THAT'S WHERE YOU ARE
10:31:28 15 SORT OF TESTING AGAINST THE CUSTOMER SPECIFICATIONS?

10:31:31 16 A. THAT'S CORRECT. AND THE CUSTOMER IS THERE TO TEST ALONG
10:31:34 17 WITH US. SO THEY ARE THERE TO TEST ALONG WITH US SO THEY CAN
10:31:34 18 VERIFY THE RESULTS ARE CORRECT.

10:31:40 19 SO SEPTEMBER 2013, WE DID NOT DO THAT WELL. BUT FACEBOOK
10:31:43 20 SAID FINE, YOU CAN COME BACK AND MAKE SOME IMPROVEMENTS, FIX
10:31:48 21 YOUR PROBLEMS AND COME BACK.

10:31:51 22 WHAT FACEBOOK WAS FOCUSED ON, WAS RECONVERGENCE OF THE
10:31:55 23 NETWORK.

10:31:55 24 Q. CAN YOU EXPLAIN WHAT RECONVERGENCE IS? ESPECIALLY,
10:31:59 25 PERHAPS TO A FACEBOOK USER, WHAT DOES THAT MEAN?

10:32:01 1 A. YES. AS YOU MAY KNOW, FACEBOOK GENERALLY DOESN'T GO DOWN.
10:32:08 2 IT NEEDS TO BE UP AND RUNNING 24 BY 7 BY 365.

10:32:12 3 SO WHEN YOU BUILD A DATA CENTER THAT ONE SWITCH FAILS, FOR
10:32:17 4 A SHORT WHILE, ALL THE OTHER SWITCHES HAVE TO SEND TRAFFIC TO A
10:32:20 5 DIFFERENT PATH. THEY RECALCULATE THEIR PATH. AND THAT RESULTS
10:32:25 6 IN A SMALL DISRUPTION. IT CAN TAKE SOMETIMES ONE OR
10:32:29 7 TWO SECONDS, AND FACEBOOK WILL BE DOWN FOR ONE OR TWO SECONDS.
10:32:32 8 NO ONE WANTS THAT.

10:32:33 9 SO FACEBOOK REQUIRED THAT THE NETWORK RECONVERGE, AS
10:32:38 10 QUICKLY AS POSSIBLE SO THAT THE END USER DOES NOT SEE ANY DOWN
10:32:41 11 TIME.

10:32:41 12 Q. AND HOW DID ARISTA DO IN THE SECOND TIME?

10:32:45 13 A. WE WORKED AROUND THE CLOCK, AND ABOUT TWO OR THREE MONTHS
10:32:50 14 AFTER THAT WE RESUBMITTED A NEW VERSION OF OUR OPERATING SYSTEM
10:32:53 15 AND WE MANAGED TO RECONVERGE SIGNIFICANTLY FASTER, AND WE WERE
10:32:59 16 MORE THAN TEN TIMES FASTER THAN OUR COMPETITION AT THAT POINT,
10:33:05 17 AS FOR FACEBOOK, AND THAT'S WHY THEY GAVE US THE AWARD.

10:33:10 18 Q. DID THE SELECTION OF CLI COMMANDS COME UP IN THE
10:33:14 19 DISCUSSION WITH FACEBOOK FOR THAT PROJECT?

10:33:16 20 A. NO, THE CLI WAS NOT A FOCUS OF DISCUSSION, IT WAS VERY
10:33:20 21 MUCH THE DESIGN THEY WANTED WITH THE RECONVERGENCE THAT THEY
10:33:24 22 WERE LOOKING FOR.

10:33:26 23 MR. SILBERT: I HAVE NO FURTHER QUESTIONS.

10:33:28 24 THANK YOU, MR. SADANA.

10:33:28 25 THE COURT: THIS WOULD BE A GOOD TIME FOR OUR MORNING

10:33:31 1 BREAK, THEN, BEFORE THE CROSS-EXAMINATION.

10:33:32 2 MR. NELSON: THANK YOU, YOUR HONOR.

10:33:33 3 THE COURT: LET'S TAKE A 15-MINUTE BREAK.

10:33:35 4 (RECESS FROM 10:33 A.M. UNTIL 10:49 A.M.)

10:49:38 5 THE COURT: ALL RIGHT. WE ARE BACK ON THE RECORD.

10:50:11 6 PLEASE BE SEATED EVERYONE. ALL OF OUR JURORS ARE HERE.

10:50:14 7 AND MR. NELSON, IS THIS YOUR CROSS-EXAMINATION?

10:50:16 8 MR. NELSON: IT IS, YOUR HONOR.

10:50:17 9 THE COURT: GO AHEAD, PLEASE.

10:50:18 10 **CROSS-EXAMINATION**

10:50:19 11 BY MR. NELSON:

10:50:28 12 Q. GOOD MORNING, SIR.

10:50:29 13 A. GOOD MORNING.

10:50:30 14 Q. I JUST HAVE A FEW QUESTIONS FOR YOU, AND SEE IF I CAN
10:50:33 15 FIGURE SOME OF THIS OUT, OKAY.

10:50:35 16 SO YOU STARTED, LIKE, 2007; DOES THAT SOUND ABOUT RIGHT?
10:50:40 17 AT ARISTA.

10:50:40 18 A. THAT'S RIGHT. I STARTED JULY 2007.

10:50:42 19 Q. OKAY. AND IT'S BEEN YOUR JOB RESPONSIBILITY FROM THE
10:50:46 20 BEGINNING TO GET FEEDBACK FROM CUSTOMERS ABOUT THE PRODUCT;
10:50:49 21 RIGHT?

10:50:49 22 A. SINCE I JOINED -- YES.

10:50:50 23 Q. INCLUDING THE CLI; RIGHT?

10:50:52 24 A. INCLUDING FEATURE REQUESTS. THE FEATURE REQUESTS OFTEN
10:50:58 25 RESULT IN RELATED COMMANDS, BUT IN MOST CASES ARE LARGELY THE

10:51:03 1 REQUESTS THAT I FOCUS ON HAVE BEEN ABOUT THE PRODUCT
10:51:06 2 REQUIREMENTS, WHICH ARE THE FUNCTIONALITY OF THE PRODUCT OR THE
10:51:09 3 NUMBER OF PORTS AND SO ON, NOT SPECIFICALLY JUST THE CLI.

10:51:13 4 Q. I DON'T THINK THAT'S WHAT I ASKED.

10:51:16 5 ONE OF THE THINGS THAT YOU GET FEEDBACK ON IS THE CLI;
10:51:19 6 RIGHT, FROM CUSTOMERS?

10:51:21 7 A. CUSTOMERS OFTEN ASK FOR CERTAIN COMMANDS, NOT THE OVERALL
10:51:27 8 CLI, I UNDERSTAND IF THAT'S WHAT YOU ARE REFERRING TO.

10:51:32 9 Q. OKAY. SIR, CAN YOU TAKE A LOOK AT YOUR DEPOSITION
10:51:35 10 TRANSCRIPT, MARCH 17TH, THEY ARE IN THERE BY DATE. IT STARTS
10:51:40 11 AT PAGE 271, LINE 19 THROUGH LINE 24.

10:51:46 12 A. SORRY, PAGE NUMBER?

10:51:50 13 Q. 271. LINE 19 THROUGH 24.

10:51:55 14 MR. NELSON: MAY I GO AHEAD AND PLAY THAT CLIP,
10:51:57 15 YOUR HONOR?

10:51:57 16 THE COURT: WE WILL JUST LET THE WITNESS GET THERE
10:52:00 17 FIRST. LET ME KNOW WHAT YOU'VE FOUND IT.

10:52:05 18 THE WITNESS: OKAY.

10:52:08 19 THE COURT: GO AHEAD.

10:52:12 20 **(THE VIDEO DEPOSITION OF ANSHUL SADANA WAS PLAYED INTO THE**
10:52:14 21 **RECORD.)**

10:52:14 22 BY MR. NELSON:

10:52:23 23 Q. OKAY. SO CLI, THAT'S ONE OF THE THINGS; RIGHT?

10:52:26 24 A. SURE.

10:52:27 25 Q. AND I THINK DURING YOUR TRIAL TESTIMONY, WHEN -- YOU WERE

10:52:32 1 HERE LAST WEEK; RIGHT, SO DURING YOUR TRIAL TESTIMONY LAST WEEK

10:52:35 2 YOU WERE TALKING ABOUT SOME OF THE VERTICAL MARKETS THAT ARISTA

10:52:39 3 WAS TARGETING FROM THE BEGINNING; RIGHT?

10:52:41 4 A. THAT'S RIGHT.

10:52:42 5 Q. AND ONE OF THOSE VERTICAL MARKETS WAS CLOUD COMPUTING FROM

10:52:46 6 THE BEGINNING; RIGHT?

10:52:47 7 A. THAT'S RIGHT.

10:52:48 8 Q. AND NOW, YOU AGREE, SIR, THAT YOU VIEWED HAVING AN

10:52:55 9 IOS-LIKE CLI IS A BARRIER TO ENTERING INTO THE SWITCH MARKET

10:52:58 10 FOR ARISTA, TRUE?

10:52:59 11 A. AT THAT TIME, TRUE.

10:53:01 12 Q. OKAY. AND IN FACT, IN THE BEGINNING STAGES OF ARISTA'S

10:53:12 13 DEVELOPMENT, IT WAS YOUR VIEW POINT THAT ARISTA SHOULD MAINTAIN

10:53:16 14 CISCO CLI INTERFACE FOR A MAJORITY OF THE COMMANDS YOU WERE

10:53:19 15 IMPLEMENTING AS PART OF THE BASE FEATURE SET; RIGHT?

10:53:22 16 A. GIVEN THAT WE WERE FOCUSED ON THE ENTERPRISE MARKET AT

10:53:25 17 THAT TIME MOSTLY, YES.

10:53:26 18 Q. BUT EVEN FOR FEATURES THAT EXIST ON CISCO'S CLI, DO YOU

10:53:32 19 BELIEVE THAT YOU HAVE MORE FLEXIBILITY NOW TO DEVIATE FROM

10:53:35 20 CISCO'S CLI FOR THOSE FEATURES?

10:53:39 21 A. DEPENDING ON THE CUSTOMER, VERTICAL, YES.

10:53:45 22 Q. OKAY. SIR, CAN YOU LOOK AT YOUR DEPOSITION, THE SAME ONE,

10:53:49 23 MARCH 17TH OF THIS YEAR, 2016. WE ARE STILL 2016. BEEN A LONG

10:53:55 24 TRIAL BUT WE ARE STILL THERE?

10:53:56 25 A. YES, BUT WHICH PAGE?

10:53:58 1 Q. IT IS PAGE 248. LINES 1 TO 5. ARE YOU THERE, SIR?

10:54:11 2 A. YES.

10:54:11 3 Q. AND MAY I PLAY THE CLIP, YOUR HONOR?

10:54:14 4 THE COURT: YOU MAY.

10:54:15 5 (THE VIDEO DEPOSITION OF ANSHUL SEDANA WAS PLAYED INTO THE
10:54:16 6 RECORD.)

10:54:16 7 BY MR. NELSON:

10:54:31 8 Q. OKAY. SO THAT'S A TRUE STATEMENT; RIGHT, SIR?

10:54:37 9 A. THAT'S A TRUE STATEMENT.

10:54:38 10 Q. AND NOW SITTING HERE TODAY, DO YOU BELIEVE THAT IT'S
10:54:46 11 DESIRABLE FOR ARISTA TO HAVE THE FLEXIBILITY TO REDO COMMANDS,
10:54:50 12 IF NECESSARY, FROM THE COMMANDS THAT ARE IMPLEMENTED TO CISCO'S
10:54:53 13 CLI?

10:54:54 14 A. AS I MENTIONED IN MY DEPOSITION, FOR THE BASE FEATURES,
10:55:00 15 NO, BECAUSE IT'S USED BY ALL THE CUSTOMERS ACROSS THE WORLD,
10:55:03 16 INCLUDING ENTERPRISES.

10:55:05 17 FOR OTHER FEATURES, YES.

10:55:06 18 Q. OKAY. SO FOR THE BASE FEATURES, I THINK YOU CALLED THEM
10:55:10 19 "CORE FEATURES" LAST TIME AROUND?

10:55:11 20 A. SURE.

10:55:12 21 Q. NO FLEXIBILITY TO DEVIATE FROM THE CISCO CLI, EVEN TODAY;
10:55:15 22 RIGHT?

10:55:15 23 A. BECAUSE WE STILL WANT TO WIN THE ENTERPRISE CUSTOMERS AND
10:55:18 24 THAT'S THE CLI THEY ARE FAMILIAR WITH.

10:55:21 25 Q. OKAY. SO NOW YOU TALKED A BIT ABOUT MICROSOFT AND SOME OF

10:55:25 1
10:55:27 2
10:55:27 3
10:55:32 4
10:55:35 5
10:55:36 6
10:55:40 7
10:55:42 8
10:55:43 9
10:55:47 10
10:55:49 11
10:55:53 12
10:55:57 13
10:55:58 14
10:56:02 15
10:56:06 16
10:56:06 17
10:56:11 18
10:56:12 19
10:56:15 20
10:56:23 21
10:56:28 22
10:56:31 23
10:56:34 24
10:56:39 25

THE WINS YOU HAD AT MICROSOFT; RIGHT?

A. THAT'S RIGHT.

Q. BUT YOU'RE AWARE THAT CISCO STILL SELLS A LOT, HUNDREDS OF MILLIONS OF DOLLARS OF SWITCHES TO MICROSOFT; RIGHT?

A. YES, THEY DO.

Q. SO YOU'RE IN COMPETITION AND CISCO WINS SOME OF THOSE DEALS AND YOU WIN SOME OF THOSE DEALS; RIGHT?

A. THAT'S CORRECT.

Q. RIGHT. SO YOU WOULD AGREE, SIR, THAT CISCO STILL MAKES PRETTY DARN GOOD SWITCH; RIGHT?

A. NOT REALLY. CISCO ONLY MAKES A GOOD TOP-OF-RACK SPECIAL FOR MICROSOFT. THE SPINE FOR AZURE, TODAY, IS PRETTY MUCH ALL ARISTA.

Q. SO, SIR, WOULD IT SURPRISE YOU TO LEARN THAT I THINK MY SON IS A BETTER HOCKEY PLAYER THAN MOST OF THE OTHER KIDS OUT THERE?

A. I'M NOT A HOCKEY EXPERT, BUT IF YOU WANT TO TALK CRICKET I'M HAPPY TO HAVE A DISCUSSION.

Q. OKAY. I MEAN HE DOESN'T PLAY CRICKET, I'M SORRY.

NOW, YOU -- I THINK YOU SAID DURING YOUR DIRECT TESTIMONY THAT WE HAD BEFORE THE BREAK, THAT YOU DON'T THINK CLI IS IMPORTANT ANYMORE; IS THAT RIGHT?

A. FOR CUSTOMERS THAT ARE AUTOMATING, THE CLI IS NOT IMPORTANT OR A CISCO-LIKE CLI IS NOT IMPORTANT BECAUSE THEY CAN AUTOMATE, THEY CAN TRY TO PROGRAM.

10:56:40 1 Q. SO THEN IT WOULDN'T BE ANY SKIN OFF ARISTA'S NOSE JUST TO
10:56:44 2 TAKE IT OUT; RIGHT?

10:56:45 3 A. DEPENDS ON THE CUSTOMER.

10:56:47 4 Q. THAT'S WHAT I'M SAYING. YOU SAY THAT ALL YOUR CUSTOMERS I
10:56:50 5 THINK YOU SAID YOU ARE THE VIA LEADER IN THE CLOUD COMPUTING;
10:56:54 6 RIGHT?

10:56:54 7 A. THAT'S CORRECT.

10:56:54 8 Q. AND YOU SAY THAT'S WHERE YOU MAKE MOST OF YOUR SALES;
10:56:57 9 RIGHT?

10:56:57 10 A. THAT'S CORRECT.

10:56:57 11 Q. SO, JUST TAKE IT OUT; RIGHT?

10:56:59 12 A. BUT WE ALSO WANT TO WIN OTHER PARTS OF THE MARKET LIKE THE
10:57:03 13 ENTERPRISE. WE HAVEN'T YET GOTTEN THERE.

10:57:04 14 Q. OKAY. SO WHAT YOU ARE SAYING IS THAT, EVEN YOU WOULD
10:57:07 15 AGREE, THAT YOU NEED TO HAVE THAT CISCO CLI IN ORDER TO COMPETE
10:57:11 16 WITH CERTAIN CUSTOMERS; RIGHT?

10:57:13 17 A. AT THE LEGACY ENTERPRISE SPACE, THESE CUSTOMERS MOVE
10:57:17 18 SLOWLY.

10:57:18 19 Q. AND THOSE ARE MARKETS THAT YOU ARE TARGETING; RIGHT?

10:57:20 20 A. THAT'S RIGHT.

10:57:21 21 Q. AND IN THE BEGINNING, FOR CLOUD COMPUTING, YOU BELIEVE
10:57:25 22 THAT YOU NEED A CISCO-LIKE CLI; RIGHT?

10:57:28 23 A. NO.

10:57:29 24 Q. WELL SIR, YOU SAID THAT YOU BELIEVE THAT HAVING THE
10:57:34 25 CISCO-LIKE CLI WAS A BARRIER TO ENTRY TO GET INTO THE MARKET;

10:57:37 1 RIGHT?

10:57:37 2 A. THAT'S RIGHT. IN THE 2007, 2008 TIMEFRAME, MORE THAN
10:57:43 3 80 PERCENT OF THE INFRASTRUCTURE WAS NETWORKS AND SO ON. THE
10:57:49 4 SPIN WAS THE WITH THE ENTERPRISE CUSTOMERS.

10:57:52 5 THE CLOUD WAS VERY SMALL AT THAT TIME. AND I DID SAY THAT
10:57:54 6 WE COULD HAVE PROBABLY A FEW CUSTOMERS, AND THAT FEW REFERS TO
10:57:58 7 THE CLOUD COMPANIES THAT WERE AUTOMATED DURING THAT TIME OF
10:58:03 8 HAVING THE DISCUSSION ON AUTOMATION.

10:58:05 9 Q. NOW YOU SAW -- MAYBE YOU DIDN'T BECAUSE YOU WEREN'T IN THE
10:58:09 10 ROOM, BUT YOU ARE AWARE THAT THERE WAS STILL FEEDBACK FROM
10:58:13 11 MICROSOFT SAYING MICROSOFT WOULD LIKE CERTAIN CLI COMMANDS,
10:58:16 12 CORRECT?

10:58:16 13 A. MICROSOFT GENERALLY REQUESTS FEATURES, NOT A SPECIFIC
10:58:19 14 COMMAND, THEY WANT THE FUNCTIONALITY, FOR A GIVEN FEATURE, YOU
10:58:23 15 WILL HAVE SOME CORRESPONDING CLI.

10:58:25 16 Q. BUT SIR, YOU WOULD AGREE WITH ME THAT EVEN FOR FEATURES
10:58:35 17 THAT EXIST ON CISCO'S CLI, YOU BELIEVE THAT YOU DON'T HAVE
10:58:42 18 FLEXIBILITY NOW TO DEVIATE FROM CISCO CLI FOR THOSE FEATURES;
10:58:46 19 RIGHT?

10:58:46 20 A. WE DON'T WANT TO HAVE TWO DIFFERENT CLI'S, ONE FOR
10:58:50 21 ENTERPRISE CUSTOMERS AND SOMETHING DIFFERENT FOR CLOUD
10:58:53 22 COMPANIES. SO TO KEEP IT CONSISTENT, I WOULD KEEP IT THE SAME
10:58:57 23 CLI FOR ALL OUR CUSTOMERS.

10:58:58 24 Q. SO IN OTHER WORDS, YOU DON'T HAVE FLEXIBILITY TO DEVIATE
10:59:02 25 WAS WHAT YOU WERE SAYING FROM THE CISCO-CLI, CORRECT?

10:59:07 1 A. THERE ARE TWO THINGS. ONE, SINCE YOU REFERRED TO THE
10:59:12 2 2007, 2008 DISCUSSION, AT THAT TIME, IT WAS CERTAINLY A BARRIER
10:59:17 3 TO ENTRY. AND AS I MENTIONED, THE NETWORKING INDUSTRY HAS
10:59:20 4 CHANGED DRAMATICALLY, MORE AND MORE CUSTOMERS ARE AUTOMATING.

10:59:25 5 SO CAN WE WIN A LOT MORE ENTERPRISES NOW WITH A DIFFERENT
10:59:28 6 CLI, WE CAN. BUT ARE THERE A FEW COMPANIES THAT WILL TAKE A
10:59:32 7 LONG TIME OR MAY NOT TRANSITION, YES, I STILL BELIEVE THAT.

10:59:36 8 THEN WHY HAVE DIFFERENT CLI'S, GIVEN THAT ALL OF OUR
10:59:40 9 COMPETITORS ALSO USE THE SAME TYPE OF CLI? I THINK IT WOULD BE
10:59:43 10 UNFAIR FOR US TO CHANGE OUR CLI, AND HP OR FORCE10 THAT WE
10:59:47 11 COMPETE WITH HAVE THE SAME CLI.

10:59:49 12 Q. OKAY, SIR, CAN YOU GO BACK TO YOUR MARCH 17, 2016 THIS
10:59:53 13 YEAR DEPOSITION, AGAIN, AND LOOK AT PAGE 248, LINES 1 TO 5.

10:59:58 14 A. YES.

10:59:59 15 Q. OKAY. CAN I PLAY THAT CLIP?

11:00:01 16 THE COURT: YES, OF COURSE.

11:00:08 17 **(THE VIDEO DEPOSITION OF ANSHUL SEDANA WAS PLAYED INTO THE**
11:00:16 18 **RECORD.)**

11:00:16 19 BY MR. NELSON:

11:00:18 20 Q. THANK YOU, SIR.

11:00:19 21 MR. NELSON: I DON'T HAVE ANY FURTHER QUESTIONS.

11:00:21 22 THE COURT: THANK YOU, MR. NELSON.

11:00:22 23 MR. FERRALL, REDIRECT?

11:00:22 24 MR. FERRALL: YES, YOUR HONOR.

11:00:28 25 THANK YOU.

REDIRECT EXAMINATION

BY MR. FERRALL:

Q. ONE QUESTION MR. SADANA.

CAN YOU EXPLAIN TO THE JURY WHAT THE IMPLICATIONS FOR YOUR CUSTOMERS WOULD BE IF ARISTA WERE TO CHANGE ITS CLI NOW AFTER BEING ON THE MARKET FOR EIGHT YEARS?

A. THIS WOULD BE A HUGE PAIN FOR THE CUSTOMERS, BECAUSE THEY HAVE SPEND THE TIME INCLUDING OUR PRODUCTS INTO THE NETWORK AND THEY HAVE LEARNED HOW TO CONFIGURE IT, THEY'VE WRITTEN SCRIPTS ON HOW TO CONFIGURE THESE SWITCHES. AND NOW IF WE MAKE A CHANGE, THEIR ENGINEERING TEAMS WILL NOW HAVE THE BURDEN TO MAKE CHANGES TO THE NETWORK WHICH DOESN'T CHANGE THE FUNCTIONALITY OF THE NETWORK, IT'S THE SAME NUMBER OF SERVERS TALKING WITH EACH OTHER OVER THE SAME PROTOCOLS, BUT THEY WILL HAVE TO GO THROUGH THE PAIN OF CHANGING THE CLI.

Q. I LIED. I HAVE TWO QUESTIONS.

DID CISCO EVER TELL YOU TO CHANGE ITS CLI BEFORE THIS LAWSUIT WAS FILED?

A. NO, THERE WAS NO COMMENT OR DISCUSSION WITH CISCO AT THE TIME TO CHANGE OUR CLI.

MR. FERRALL: NOTHING FURTHER.

THANK YOU, YOUR HONOR.

THE COURT: MR. NELSON?

MR. NELSON: NOTHING FURTHER, YOUR HONOR.

THE COURT: OKAY. AND MR. SADANA, THANK YOU FOR YOUR

11:01:43 1 TESTIMONY. YOU ARE FREE TO GO.

11:01:45 2 MR. VAN NEST, YOUR NEXT WITNESS?

11:01:47 3 MR. VAN NEST: YOUR HONOR, AT THIS TIME ARISTA
11:01:49 4 NETWORKS RESTS.

11:01:50 5 THE COURT: ALL RIGHT. THANK YOU.

11:02:00 6 I GUESS THE BALL IS BACK IN YOUR COURT, MR. NELSON.

11:02:02 7 MR. NELSON: OKAY. I LIKE TO PLAY.

11:02:04 8 SO AT THIS POINT, WE WILL CALL DR. KEVIN ALMEROTH BACK TO
11:02:06 9 THE STAND, YOUR HONOR.

11:02:07 10 THE COURT: OKAY.

11:02:09 11 AND DR. ALMEROTH IS IN THE COURTROOM. DR. ALMEROTH, IF
11:02:11 12 YOU WOULD COME FORWARD TO THE WITNESS STAND AND STAND TO BE
11:02:14 13 SWORN.

11:02:15 14 **(PLAINTIFF'S WITNESS, DR. ALMEROTH, WAS SWORN.)**

11:02:16 15 THE WITNESS: YES, MA'AM, I DO. GOOD MORNING.

11:02:50 16 MR. NELSON: YOUR HONOR, MAY HE APPROACH?

11:02:53 17 THE COURT: OKAY. MORE BINDERS, THAT'S GOOD.

11:03:10 18 **DIRECT EXAMINATION IN REBUTTAL**

11:03:10 19 BY MR. NELSON:

11:03:11 20 Q. GOOD MORNING, SIR.

11:03:12 21 A. GOOD MORNING.

11:03:13 22 Q. CAN YOU GO AHEAD AND REINTRODUCE YOURSELF TO US.

11:03:16 23 A. SURE. MY NAME IS KEVIN ALMEROTH, I'M A PROFESSOR AT UC
11:03:21 24 SANTA BARBARA, AND I'M HERE TESTIFYING ON SOME OF THE ISSUES ON
11:03:25 25 BEHALF OF CISCO.

11:03:26 1 Q. OKAY. THANK YOU.

11:03:27 2 AND LIKE MR. FERRALL, WE HAVE BEEN HERE A WHILE, SO I'M
11:03:30 3 GOING TO GET RIGHT TO IT INSTEAD OF GOING BACK THROUGH YOUR
11:03:34 4 BACKGROUND AND SUCH.

11:03:36 5 SO CAN YOU LOOK AT EXHIBIT 4796 IN YOUR BINDER.

11:03:43 6 A. YES, SIR.

11:03:46 7 Q. AND CAN YOU TELL WHAT THIS DOCUMENT IS?

11:03:49 8 A. SURE. IT'S A SUMMARY EXHIBIT, AND IT LISTS THE CISCO CLI
11:03:53 9 COMMANDS. AND IT IDENTIFIES THE COPYRIGHTED WORKS IN WHICH
11:03:57 10 THOSE COMMAND EXPRESSIONS APPEAR. SO WHAT VERSIONS OF CISCO
11:04:03 11 IOS, IOS XR, IOS XE AND NX-OS.

11:04:08 12 Q. OKAY. AND SO --

11:04:10 13 MR. NELSON: YOUR HONOR, AT THIS POINT, I MOVE TO
11:04:11 14 ADMIT EXHIBIT 4796 INTO EVIDENCE.

11:04:14 15 MR. VAN NEST: NO OBJECTION, YOUR HONOR.

11:04:15 16 THE COURT: IT WILL BE ADMITTED.

11:04:16 17 (PLAINTIFF'S EXHIBIT 4796 WAS ADMITTED INTO EVIDENCE.)

11:04:16 18 BY MR. NELSON:

11:04:16 19 Q. SO CAN WE JUST PULL UP THE FIRST PAGE AND THEN YOU CAN
11:04:21 20 EXPLAIN TO US HERE WHAT'S IN THAT FIRST COLUMN.

11:04:23 21 A. FIRST COLUMN IS THE NUMBER. YOU MEAN THE SECOND COLUMN?

11:04:29 22 Q. OH, SORRY, YOU ARE RIGHT. I'M WRONG. THE SECOND COLUMN,
11:04:36 23 SORRY.

11:04:36 24 A. SURE. THE SECOND COLUMN IS THE LIST OF THE COMMAND
11:04:39 25 EXPRESSIONS, THE 506 THAT HAVE BEEN AT ISSUE FOR ALMOST TWO

11:04:43 1 WEEKS NOW.

11:04:44 2 Q. AND THEN THE FOURTH COLUMN, THE LAST ONE, CAN YOU EXPLAIN
11:04:49 3 WHAT THAT IS?

11:04:49 4 A. THE LAST COLUMN IS THE VERSION NUMBER OF THE IOS, IOS XR,
11:04:58 5 IOS XE, AND NX-OS THAT THOSE COMMANDS APPEAR IN. AND IT
11:05:02 6 DESCRIBES A RANGE FOR THE VERSION OF EACH OF THOSE OPERATING
11:05:07 7 SYSTEMS.

11:05:07 8 Q. AND IF WE JUST LOOK AT THE FIRST ONE THERE, TRIPLE AN
11:05:12 9 ACCOUNTING, THERE'S MULTIPLE DIFFERENT OF THOSE USER INTERFACES
11:05:17 10 THAT ARE LISTED THERE; DO YOU SEE THAT?

11:05:19 11 A. YES.

11:05:20 12 Q. AND CAN YOU EXPLAIN TO US WHY THAT'S THE CASE?

11:05:22 13 A. THAT'S THE CASE BECAUSE THERE ARE MULTIPLE VERSIONS OF
11:05:25 14 EACH OPERATING SYSTEM, AND IN EACH OPERATING SYSTEM FOR EACH OF
11:05:30 15 THE VERSIONS THAT ARE LISTED THERE, THAT COMMAND APPEARS IN
11:05:34 16 THAT VERSION OF THE OPERATING SYSTEM.

11:05:35 17 Q. OKAY. THANK YOU SIR. YOU CAN SET THAT ASIDE.

11:05:47 18 NOW I WANT TO TURN TO YOUR RESPONSE TO SOME OF DR. BLACK'S
11:05:55 19 OPINIONS CONCERNING THE CREATIVITY OF THE COLLECTION OF
11:06:01 20 COMMANDS THAT ARE ASSERTED HERE.

11:06:04 21 A. YES.

11:06:05 22 Q. SO YOU RECALL THAT TESTIMONY?

11:06:07 23 A. I DO.

11:06:08 24 Q. NOW IS THERE ANYTHING THAT YOU HEARD IN THAT TESTIMONY
11:06:12 25 THAT CHANGED ANY OF YOUR OPINIONS?

11:06:14 1 A. NO. I STILL HOLD THE OPINION THAT THOSE COMMANDS ARE
11:06:19 2 ORIGINAL AND CREATIVE TO CISCO.

11:06:21 3 Q. NOW, IF WE FOCUS ON SOME OF THE NEW TESTIMONY WE'VE HEARD,
11:06:26 4 IS THERE ANYTHING THAT YOU'VE HEARD AS YOU'VE BEEN HERE FOR
11:06:29 5 TRIAL AND ALSO SUPPORTS THAT?

11:06:31 6 A. YES. SINCE THE LAST TIME I WAS ON THE STAND, THERE HAVE
11:06:34 7 BEEN A NUMBER OF WITNESSES. AND SEVERAL OF THOSE HAVE
11:06:37 8 TESTIFIED TO THE ORIGINALITY AND THE CREATIVITY OF THE CISCO
11:06:43 9 COMMANDS.

11:06:44 10 Q. AND CAN YOU TELL US, FOR EXAMPLE, MR. SHAFER FROM JUNIPER,
11:06:50 11 WAS THERE ANYTHING IN HIS TESTIMONY?

11:06:52 12 A. RIGHT.

11:06:54 13 MR. VAN NEST: OBJECTION.

11:06:55 14 THIS IS JUST VOUCHING, YOUR HONOR, AND NOT IN HIS REPORT.

11:06:57 15 THE COURT: SUSTAINED. MOVE ON.

11:07:01 16 MR. NELSON: BUT YOUR HONOR, THEY'VE COMMENTED --
11:07:04 17 THEIR EXPERTS COMMENTED ON TRIAL TESTIMONY THROUGHOUT, IN FACT,
11:07:07 18 WE JUST HEARD THAT.

11:07:07 19 THE COURT: THEN MAYBE YOU NEED TO REPHRASE THE
11:07:09 20 QUESTION.

11:07:10 21 MR. NELSON: OKAY.

11:07:10 22 Q. DID YOU SEE ANYTHING FROM MR. SHAFER TO INDICATE THAT
11:07:14 23 THERE ARE DIFFERENT CHOICES FOR CREATING COMMANDS?

11:07:19 24 A. YES, I DID. HE TESTIFIED, MR. SHAFER DID, THAT HE
11:07:25 25 DEVELOPED THE CLI AT JUNIPER. AND THE CLI IN JUNOS IS

11:07:30 1 DIFFERENT THAN ANY OF IOS OR ANY OF THE CISCO'S USER
11:07:37 2 INTERFACES.

11:07:37 3 AND IN THAT TESTIMONY, IT WAS CLEAR TO ME THAT THERE WERE
11:07:41 4 DIFFERENT CHOICES THAT COULD BE MADE FOR THE DIFFERENT
11:07:43 5 COMMANDS.

11:07:44 6 Q. AND WHY DO YOU SAY THAT?

11:07:47 7 A. WELL, I SAY THAT --

11:07:49 8 MR. VAN NEST: OBJECTION, AGAIN, YOUR HONOR.

11:07:50 9 WE ARE JUST VOUCHING FOR WITNESSES THAT THE JURY HAS
11:07:53 10 HEARD, AND THEY CAN EVALUATE IT.

11:07:54 11 THE COURT: THIS WITNESS IS FREE TO TESTIFY ABOUT THE
11:07:56 12 EVIDENCE THAT SUPPORTS THE OPINIONS HE'S RENDERED IN THE CASE.

11:08:01 13 MR. NELSON: RIGHT.

11:08:02 14 THE COURT: SO YOU CAN ASK THE QUESTION A DIFFERENT
11:08:04 15 WAY.

11:08:04 16 BY MR. NELSON:

11:08:04 17 Q. SO WITH RESPECT TO MR. SHAFER AND JUNOS, DID YOU
11:08:08 18 UNDERSTAND THAT JUNOS ALSO USED SOME INDUSTRY STANDARD
11:08:13 19 TERMINOLOGY? IN OTHER WORDS, FROM THESE PREVIOUS RFC'S THAT
11:08:18 20 WE'VE HEARD ABOUT?

11:08:19 21 A. YES, I UNDERSTOOD THAT MR. SHAFER TESTIFIED THAT THEY WERE
11:08:24 22 IMPLEMENTING SOME OF THE SAME STANDARD PROTOCOLS BUT THEY MADE
11:08:28 23 DIFFERENT CHOICES IN THE SYNTAX, IN THE STRUCTURE OF THE
11:08:30 24 COMMANDS AND ULTIMATELY JUNOS WAS A VERY DIFFERENT USER
11:08:35 25 INTERFACE THAN WHAT CISCO HAD.

11:08:36 1 Q. AND HOW ABOUT IF WE MOVE ON TO THE GENTLEMAN FROM HP. WAS
11:08:44 2 THERE ANY EVIDENCE IN THAT TESTIMONY THAT INDICATED THERE ARE
11:08:49 3 CHOICES?

11:08:49 4 A. YES. MR. VENKATRAMAN TESTIFIED ABOUT WHAT WAS HAPPENING
11:08:54 5 AT HP. AND WHAT WAS INTERESTING ABOUT HIS TESTIMONY WAS THAT
11:08:59 6 HE WAS DESCRIBING THAT THERE WERE PRODUCTS THAT WOULD IMPLEMENT
11:09:03 7 THE SAME FUNCTIONALITY, BUT THEY WOULD HAVE DIFFERENT COMMANDS.

11:09:07 8 AND SOME OF THE EXAMPLES HE USED, ONE OF THEM WAS HE SAID
11:09:11 9 THAT TWO DIFFERENT PRODUCTS COULD SAVE DATA. AND IN ONE
11:09:17 10 PRODUCT HE SAID THEY USED THE WORD "WRITE." AND IN ANOTHER
11:09:21 11 PRODUCT THEY USED THE WORD "SAVE."

11:09:24 12 SO THAT DEMONSTRATES FOR THE SAME FUNCTIONALITY, YOU CAN
11:09:26 13 USE DIFFERENT WORDS TO ACCOMPLISH THAT FUNCTIONALITY.

11:09:28 14 Q. NOW, SIR, I WOULD LIKE TO GO TO AN EXHIBIT THAT DR. BLACK
11:09:34 15 TALKED ABOUT. 9042, IF WE CAN PULL THAT UP.

11:09:47 16 AND DO YOU RECALL, IN GENERAL, DR. BLACK'S TESTIMONY
11:09:51 17 REGARDING THIS?

11:09:51 18 A. YES, I DO.

11:09:52 19 Q. NOW DO YOU THINK IT'S APPROPRIATE WHEN YOU ARE LOOKING AT
11:09:57 20 CREATIVITY OF THE SET OF COMMANDS TO SIMPLY GO AND LOOK FOR
11:10:01 21 WORDS IN PRE-EXISTING DOCUMENTS?

11:10:04 22 A. NO. THAT'S NOT -- IT'S NOT APPROPRIATE TO DETERMINE
11:10:08 23 WHETHER OR NOT THERE'S CREATIVITY.

11:10:10 24 Q. AND WHY IS THAT?

11:10:12 25 A. WELL, BECAUSE JUST FINDING THE WORDS THAT EXIST SOMEWHERE,

11:10:17 1 WHETHER IT'S AN INDUSTRY TERM OR IN A STANDARD IN A PROTOCOL
11:10:22 2 FOR EXAMPLE, DOESN'T MEAN THAT THERE'S NOT ORIGINALITY OR
11:10:25 3 CREATIVITY.

11:10:26 4 AND HERE'S AN ANALOGY, IF I GO TO THE NEWSPAPER AND I GET
11:10:31 5 A NEWS STORY, YOU WERE TALKING ABOUT HOCKEY, SO I GET A NEWS
11:10:38 6 STORY ABOUT HOCKEY. I COULD DO THE SAME KIND OF ANALYSIS, I
11:10:41 7 COULD FIND TERMS THAT ARE COMMON TO HOCKEY, GOALIE, RIGHT WING,
11:10:46 8 BLUE LINE, STADIUM, I COULD FIND TERMS THAT WERE COMMON TO THAT
11:10:52 9 PARTICULAR TEAM, WHO THE MASCOT WAS, WHO THE PLAYERS WERE, AND
11:10:55 10 I COULD TAKE THE WHOLE STORY AND PUT IT IN THE SAME KIND OF
11:10:59 11 GRID AND COLOR. THE SAME WORDS, BLUE, AND RED, OR BLUE AND
11:11:06 12 GREEN AND BROWN, AND BE ABLE TO SHOW THAT MOST OF THE WORDS IN
11:11:09 13 THAT STORY WERE WORDS THAT APPEARED ALREADY IN DIFFERENT
11:11:14 14 ARTICLES THAT WERE COMMON TO THE DISCUSSION OF HOCKEY. BUT I
11:11:17 15 DON'T THINK ANYBODY WOULD LOOK AT THAT STORY AND SAY THAT IT
11:11:20 16 WASN'T CREATIVE.

11:11:22 17 WHEN YOU READ THE NEWSPAPER, YOU CAN READ DIFFERENT
11:11:24 18 STORIES OR DIFFERENT TAKES ON THE SAME GAME. YOU COULD READ IT
11:11:27 19 FROM THE LOSER'S PERSPECTIVE, FROM THE WINNER'S PERSPECTIVE,
11:11:31 20 YOU COULD START WITH WHAT THE MOST SIGNIFICANT PLAY WAS OR WHAT
11:11:34 21 THE RESULT WAS.

11:11:36 22 IN THE SAME WAY THAT YOU DO COMMANDS FOR AN OPERATING
11:11:41 23 SYSTEM, YOU HAVE THE SAME CHOICES, YOU HAVE THE SAME CHOICES
11:11:44 24 WITH RESPECT TO DIFFERENT WORDS THAT YOU CAN USE, EVEN IF IT'S
11:11:48 25 FOR COMMANDS THAT ARE IMPLEMENTING A STANDARD.

11:11:51 1 YOU HAVE DIFFERENT WORD ORDERS THAT YOU CAN USE, AND SO
11:11:55 2 JUST LIKE A STORY THAT YOU WOULD READ IN THE NEWSPAPER, THERE'S
11:11:58 3 CREATIVITY AND ORIGINALITY IN THE WAY THAT CISCO DESIGNED ITS
11:12:03 4 USER INTERFACE.

11:12:04 5 Q. SO WE HAVE BEEN TALKING ABOUT CREATIVITY HERE A LOT. DO
11:12:11 6 YOU HAVE AN UNDERSTANDING OF WHAT LEVEL OF CREATIVITY IS
11:12:14 7 ACTUALLY REQUIRED?

11:12:16 8 A. I DO. MY UNDERSTANDING OF THE LAW AND THE LEVEL OF
11:12:19 9 CREATIVITY THAT'S REQUIRED IS REALLY A MINIMAL SPARK, IT'S A
11:12:24 10 VERY LOW STANDARD. YOU NEED JUST SOME EVIDENCE OF SOME CHOICE
11:12:30 11 IN DESIGN, IN LIMITED CREATIVITY. IT DOESN'T HAVE TO BE
11:12:36 12 SHAKESPEARE TO BE ABLE TO COPYRIGHT THE USER INTERFACE AND
11:12:39 13 DEMONSTRATE ITS CREATIVITY.

11:12:41 14 Q. NOW, SIR, YOU TALKED ABOUT THE WORD ORDERING OR THE WORD
11:12:45 15 SEQUENCING; RIGHT?

11:12:47 16 A. YES.

11:12:47 17 Q. AND HOW DOES THAT SHOW CREATIVITY?

11:12:52 18 A. SURE. AND ALSO, KEEP IN MIND THAT WE HAVE TO THINK ABOUT
11:12:55 19 THIS FROM THE TIME OF CREATION.

11:12:58 20 SO IF YOU THINK ABOUT THE HIERARCHIES THAT WERE CREATED
11:13:02 21 AND THE ORDERING OF THE WORDS AND THE NEED TO HAVE FLEXIBILITY
11:13:05 22 AND EXTENSIBILITY AND A CHOICE OF WHETHER YOU CAN PUT A COMMAND
11:13:09 23 IN ONE HIERARCHY BY ORDERING THE WORDS IN ONE WAY OR PUTTING IT
11:13:13 24 INTO DIFFERENT HIERARCHIES BY ORDERING IT IN A DIFFERENT WAY, I
11:13:17 25 MEAN, THAT'S ALL PART OF THE CREATIVE PROCESS AND THE DECISION

11:13:20 1 THAT CISCO HAD TO MAKE. AND MR. LOUGHEED AND MR. REMAKER
11:13:24 2 TESTIFIED TO THAT.

11:13:28 3 Q. SO DO YOU AGREE WITH DR. BLACK'S OPINION THAT THE CLI
11:13:31 4 COMMANDS ARE PURELY FUNCTIONAL?

11:13:35 5 A. NO.

11:13:35 6 Q. AND WHY IS THAT?

11:13:37 7 A. WELL, TAKE YOUR EXAMPLE WHAT MR. VENKATRAMAN SAID FROM HP,
11:13:42 8 THIS WAS WHAT I MENTIONED EARLIER AGAIN, ON CROSS-EXAMINATION
11:13:44 9 HE WAS ASKED ABOUT FUNCTIONS.

11:13:46 10 AND YOU COULD HAVE TWO ROUTERS OR SWITCHES WITH THE SAME
11:13:49 11 FUNCTION, BUT HE IDENTIFIED DIFFERENT COMMANDS, DIFFERENT
11:13:53 12 SYNTAX, DIFFERENT WORDS THAT CAN BE USED.

11:13:56 13 AND IF YOU'VE GOT DIFFERENT WORDS THAT CAN BE USED TO
11:13:59 14 ACCOMPLISH THE SAME FUNCTION, THEN THE WORDS AREN'T LIMITED TO
11:14:03 15 THE FUNCTIONS.

11:14:07 16 Q. NOW, SIR, I WANT TO MOVE TO A NEW TOPIC AND TALK ABOUT
11:14:14 17 SOME OF THE FAIR USE OPINIONS?

11:14:15 18 A. YES.

11:14:15 19 Q. THAT DR. BLACK OFFERED.

11:14:20 20 NOW, DID YOU HEAR DR. BLACK TESTIFY THAT HE THOUGHT
11:14:24 21 ARISTA'S USE OF THE CISCO CLI WAS TRANSFORMATIVE.

11:14:29 22 A. I DID HEAR THAT OPINION.

11:14:30 23 Q. AND DO YOU AGREE WITH THAT?

11:14:31 24 A. NO, I DON'T.

11:14:32 25 Q. AND WHY IS THAT?

11:14:34 1 A. WELL, A LOT OF THE TESTIMONY AROUND WHETHER OR NOT THE CLI
11:14:38 2 WAS TRANSFORMATIVE IS FOCUSED ON THINGS THAT WERE UNRELATED TO
11:14:43 3 THE CLI.

11:14:44 4 AND SO THE TRANSFORMATIVE ASPECTS, TO THE EXTENT THERE
11:14:49 5 WERE ANY, WEREN'T ANYTHING TO DO WITH THE CLI.

11:14:53 6 SO FOR EXAMPLE, THE DISCUSSION OF WHETHER THE FANS WERE ON
11:14:55 7 THE SIDE OF THE BOX OR WHETHER THEY PUT THEM IN THE BACK, THAT
11:14:59 8 DOESN'T HAVE ANYTHING TO DO WITH THE CLI AND WHETHER IT'S
11:15:02 9 TRANSFORMATIVE OR NOT.

11:15:03 10 Q. SO SIR, CAN YOU TURN TO EXHIBIT 183 IN YOUR BINDER?

11:15:19 11 A. YES.

11:15:20 12 Q. NOW IF YOU LOOK AT THE FIRST PAGE --

11:15:27 13 A. YES.

11:15:27 14 Q. CAN YOU TELL US WHAT THIS IS?

11:15:29 15 A. IT'S AN E-MAIL FROM ADAM SWEENEY, WHO IS THE VICE
11:15:32 16 PRESIDENT OF SOFTWARE AT ARISTA, AND IT'S SENT TO
11:15:37 17 MATTHEW MURRAY, AND THERE ARE A COUPLE OF CC'S, INCLUDING
11:15:41 18 KEN DUDA.

11:15:43 19 MR. NELSON: NOW, YOUR HONOR, AT THIS POINT, I WOULD
11:15:45 20 ADMIT EXHIBIT 183 INTO EVIDENCE.

11:15:48 21 THE COURT: ANY OBJECTION.

11:15:49 22 MR. VAN NEST: OBJECTION, YOUR HONOR, IT LACKS
11:15:51 23 FOUNDATION.

11:15:51 24 MR. NELSON: IT'S AN ARISTA DOCUMENT, YOUR HONOR.

11:15:58 25 MR. VAN NEST: I WILL WITHDRAW THE OBJECTION,

11:16:00 1
11:16:00 2
11:16:03 3
11:16:03 4
11:16:03 5
11:16:17 6
11:16:18 7
11:16:19 8
11:16:22 9
11:16:26 10
11:16:33 11
11:16:35 12
11:16:36 13
11:16:37 14
11:16:40 15
11:16:41 16
11:16:44 17
11:16:48 18
11:16:52 19
11:16:57 20
11:17:02 21
11:17:04 22
11:17:08 23
11:17:13 24
11:17:14 25

YOUR HONOR.

THE COURT: THANK YOU. IT WILL BE ADMITTED.

(PLAINTIFF'S EXHIBIT 183 WAS ADMITTED INTO EVIDENCE.)

BY MR. NELSON:

Q. SO IF WE MOVE DOWN THE PAGE A BIT THERE, YOU WILL SEE THERE THAT I THINK IT'S THE THIRD PARAGRAPH?

A. YES.

Q. IT SAYS, "DESPITE WHAT KEN MENTIONED IN THE BUG, I THINK THIS IS WHAT WE WANT TO IMPLEMENT. IT IS A STANDARD COMMAND ACROSS CISCO SWITCHES AND WE USUALLY TRY HARD NOT TO INNOVATE ON CLI COMMANDS WITHOUT GOOD REASON."

DO YOU SEE THAT?

A. YES, I DO.

Q. AND HOW DOES THAT AFFECT YOUR OPINION REGARDING TRANSFORMATION OF THE CLI?

A. WELL, IT'S SOME OF THE EVIDENCE THAT I RELIED ON THAT DEMONSTRATES THAT CONTRARY TO WHAT DR. BLACK TRIED TO OFFER AS AN OPINION, THAT SEVERAL OF THE ARISTA WITNESSES HAVE TESTIFIED THAT THEY WANTED THE CLI TO BE THE SAME AS CISCO'S. THEY DIDN'T WANT TO CHANGE IT. THEY DIDN'T WANT TO INNOVATE, THEY WANTED TO KEEP IT THE SAME FOR VERY SPECIFIC REASONS.

Q. NOW DID YOU SEE ANY OTHER EVIDENCE IN THE CASE THAT INDICATED THAT THE CLI, THE CISCO CLI WAS NOT TRANSFORMED IN THE ARISTA PRODUCT?

A. YES. THERE'S A LOT OF EVIDENCE.

11:17:16 1 Q. AND WHAT IS SOME OF THAT?

11:17:18 2 A. WELL, MR. DUDA TALKED ABOUT SLAVISHLY COPYING THE CLI.

11:17:24 3 MR. DALE ALSO TESTIFIED THAT THEY WANTED IT TO BE

11:17:28 4 99.999 PERCENT THE SAME.

11:17:33 5 THERE WAS EVIDENCE IN THE AT&T REPORT THAT I TALKED ABOUT

11:17:36 6 PREVIOUSLY WHERE YOU WANTED TO BE ABLE TO CUT AND PASTE THE

11:17:41 7 CONFIGURATION COMMANDS FROM CISCO DIRECTLY INTO ARISTA SO THAT

11:17:46 8 IT WOULD STILL BE ABLE TO OPERATE WITHOUT HAVING TO MAKE ANY

11:17:50 9 CHANGES.

11:17:50 10 REALLY, THE WHOLE GOAL WAS NOT TO MAKE ANY CHANGES TO THE

11:17:54 11 CLI SO THAT YOU COULD USE AN ARISTA SWITCH WITHOUT HAVING TO

11:17:59 12 RECEIVE ADDITIONAL TRAINING.

11:18:00 13 Q. AND HOW IS IT THAT CUT AND PASTING THE CONFIGURATION FILES

11:18:05 14 FROM A CISCO SWITCH TO AN ARISTA SWITCH AFFECTS THAT

11:18:09 15 TRANSFORMATION OPINION?

11:18:11 16 A. WELL, IF YOU WANT TO TAKE THE SAME COMMANDS THAT ARE

11:18:15 17 ENTERED VIA A CISCO CLI AND CUT AND PASTE THEM AND RUN THEM ON

11:18:22 18 AN ARISTA SWITCH, YOU ARE NOT CHANGING THEM.

11:18:24 19 SO THE FACT THAT YOU CAN DO THAT, THAT YOU CAN USE THE

11:18:27 20 SAME CONFIGURATION MEANS YOU HAVEN'T TRANSFORMED THE CLI, IT'S

11:18:30 21 THE SAME COMMANDS FROM ONE CLI TO THE OTHER. THERE'S NO

11:18:34 22 TRANSFORMATION THAT'S HAPPENING FROM CISCO'S CLI TO ARISTA'S

11:18:39 23 CLI.

11:18:39 24 Q. SO, SIR, I WANT TO TURN TO ANOTHER PART OF DR. BLACK'S

11:18:47 25 TESTIMONY.

11:18:47 1 AND IF YOU COULD LOOK AT EXHIBIT 9037 IN YOUR BINDER. AND
11:19:02 2 WE CAN PULL THAT UP ON THE SCREEN, IT'S ALREADY BEEN ADMITTED
11:19:06 3 INTO EVIDENCE.

11:19:06 4 A. OKAY.

11:19:07 5 Q. THAT MIGHT BE A LITTLE EASIER TO LOOK AT.

11:19:10 6 NOW CAN YOU WEE RY MIND US WHAT WE'RE LOOKING AT HERE.

11:19:13 7 A. THIS WAS AN EXHIBIT THAT DR. BLACK TESTIFIED ABOUT.

11:19:16 8 MR. VAN NEST: OBJECTION, YOUR HONOR.

11:19:17 9 THIS IS OUTSIDE THE SCOPE OF HIS REBUTTAL REPORT.

11:19:19 10 MR. NELSON: YOUR HONOR, WE COVERED THIS AT THE
11:19:21 11 SIDEBAR LAST TIME IN HIS DEPOSITION. HE HAD TALKED ABOUT
11:19:25 12 THE --

11:19:25 13 THE COURT: OVERRULED.

11:19:27 14 THE WITNESS: OKAY. SO THIS WAS AN EXHIBIT THAT
11:19:29 15 DR. BLACK RELIED ON COMPARING THE CISCO COMMANDS WITH THE
11:19:33 16 ARISTA COMMANDS, AND THEN HE ALSO HAD SOME ADDITIONAL
11:19:39 17 DISCUSSION ABOUT THE PARAMETERS THAT CAN BE USED WITH THE
11:19:41 18 COMMANDS.

11:19:42 19 Q. AND WHAT'S THE RELEVANCE OF THE PARAMETERS TO THE
11:19:47 20 TRANSFORMATION OR LACK THEREOF IN THIS CASE?

11:19:50 21 A. WELL, THERE ISN'T ANY RELEVANCE. WHAT'S IMPORTANT HERE IS
11:19:53 22 THE COMMAND ITSELF. AND THE FACT THAT YOU CAN HAVE A PARAMETER
11:19:57 23 AFTER IT.

11:19:58 24 SO FOR EXAMPLE, IF YOU ARE CONFIGURING AN IP ADDRESS AND
11:20:01 25 THERE'S A PARAMETER THAT SAYS THIS IS THE IP ADDRESS THAT I

11:20:05 1 WANT TO USE, OR THE NAME OF THE HOST THAT I WANT TO USE OR SOME
11:20:09 2 DETAIL THAT'S BEING USED AS PART OF THE COMMAND, THOSE
11:20:13 3 PARAMETERS DON'T AFFECT THE FACT THAT YOU STILL HAVE THE
11:20:17 4 COMMAND.

11:20:17 5 IN FACT, IF YOU LOOK AT THIS EXHIBIT, IT HAS AAA
11:20:22 6 ACCOUNTING UNDER THE CISCO COMMAND, AND IT HAS AAA ACCOUNTING
11:20:26 7 UNDER THE ARISTA COMMAND.

11:20:27 8 Q. AND SO IF WE SCROLL DOWN, GO TO THE NEXT PAGE, THERE'S
11:20:34 9 ANOTHER ONE WE SEE THERE, AAA AUTHENTICATION LOGIN AND THEN THE
11:20:40 10 ARISTA COMMAND AAA AUTHENTICATION LOGIN; DO YOU SEE THAT?

11:20:44 11 A. YES.

11:20:44 12 Q. SO WHEN YOU REVIEWED THIS EXHIBIT 9037, WHAT DID THAT
11:20:47 13 ACTUALLY TELL YOU ABOUT THE RELATIONSHIP BETWEEN THE CISCO CLI
11:20:54 14 COMMANDS AND THE ARISTA CLI COMMANDS?

11:20:57 15 A. THAT THEY WERE THE SAME, THEY ARE THE SAME COMMANDS.

11:21:00 16 Q. AND IS THAT TRUE FOR ALL OF THE 506 COMMANDS?

11:21:05 17 A. IT IS.

11:21:08 18 Q. NOW -- AND WHEN YOU SAY THAT THE SAME COMMANDS, DOES THAT
11:21:13 19 MEAN THEY ARE IDENTICAL?

11:21:14 20 A. THEY ARE IDENTICAL, THAT'S CORRECT. YOU CAN LOOK THROUGH
11:21:18 21 THIS ENTIRE EXHIBIT AND YOU SEAL THOSE FIRST TWO COLUMNS PAGE
11:21:22 22 AFTER PAGE AFTER PAGE WHERE THE COMMANDS ARE IDENTICAL.

11:21:25 23 Q. NOW I WOULD LIKE TO GO TO EXHIBIT 5, WHICH IS ALREADY IN
11:21:33 24 EVIDENCE.

11:21:34 25 MR. NELSON: AND IF WE CAN GO TO THE BATES NUMBER

11:21:38 1 PAGE, MR. FISHER, IS 8994. IT'S THE ARISTA MANUAL. CAN WE GO
11:22:22 2 TO THE PAGE BATES NUMBERED, THE LAST FOUR ARE 8994.

11:22:38 3 WE CAN GO TO THAT PAGE, THAT'S TOTALLY FINE. ANY OF THESE
11:22:41 4 WILL WORK. SO MR. FISHER, WE DON'T NEED TO FIND ANOTHER ONE,
11:22:45 5 LET'S LOOK AT THAT ONE.

11:22:47 6 OKAY. SO IF WE GO TO WHERE THE COMMANDS ARE LISTED. HERE
11:22:56 7 WE GO. SO FOR EXAMPLE, HERE IN THE ARISTA MANUAL, WHAT ARE WE
11:23:04 8 LOOKING AT HERE?

11:23:05 9 A. SURE. SO FROM THE FIRST PAGE THIS WAS THE ARISTA USER
11:23:10 10 REFERENCE MANUAL, I THINK AS PART OF THE SCROLLING YOU WENT
11:23:13 11 THROUGH THE TABLE OF CONTENTS. AT THE END OF THE TABLE OF
11:23:16 12 CONTENTS, THERE IS A LIST OF COMMANDS.

11:23:20 13 IN FACT, IT MIGHT BE WORTHWHILE TO GO BACK A COUPLE OF
11:23:23 14 PAGES JUST TO SHOW -- RIGHT.

11:23:27 15 SO UNDER CHAPTER 3 HERE, IT HAS THIS COMMAND-LINE
11:23:31 16 INTERFACE. AND THEN WHAT IT'S DOING OVER THE NEXT FEW PAGES IS
11:23:34 17 LISTING THE COMMANDS FROM THE COMMAND-LINE INTERFACE.

11:23:37 18 AND IF YOU GO TO THE NEXT CHAPTER ON CHAPTER 4, THOSE ARE
11:23:41 19 ALSO COMMANDS. IN FACT, THE FIRST ONE THERE UNDER CHAPTER 4,
11:23:47 20 AAA ACCOUNTING, THAT'S ONE OF THE ONES THAT WE'VE SEEN, AAA
11:23:52 21 AUTHENTICATION ENABLE, THAT'S ANOTHER COMMAND THAT WE'VE SEEN.

11:23:56 22 SO WITHIN THE ARISTA MANUALS, THEY LIST OUT WHAT THE
11:24:00 23 IMPORTANT COMMANDS ARE. AND THOSE ARE THE SAME AS WHAT I'VE
11:24:06 24 IDENTIFIED FROM THE CISCO CLI THAT THEY GOT COPIED.

11:24:11 25 Q. NOW, SIR, I WANT TO TURN TO ANOTHER TOPIC HERE. WERE YOU

11:24:15 1 HERE FOR DR. BLACK'S TESTIMONY WHERE HE BASICALLY SAID THAT
11:24:20 2 ARISTA COPIED A TRIVIAL AMOUNT?

11:24:23 3 A. YES.

11:24:24 4 Q. DO YOU AGREE WITH THAT?

11:24:25 5 A. NO, I DON'T.

11:24:26 6 Q. AND WHY IS THAT?

11:24:27 7 A. WELL, I THINK IT'S MISLEADING. I THINK THAT JUST LOOKING
11:24:31 8 AT ANY SORT OF NUMBERS OR CALCULATIONS IS MISLEADING. THAT
11:24:36 9 WHAT YOU HAVE TO LOOK AT IS YOU HAVE TO LOOK AT THE SUBSTANCE
11:24:38 10 OF WHAT WAS TAKEN.

11:24:39 11 AND MY UNDERSTANDING IS YOU HAVE TO LOOK AT BOTH THE
11:24:42 12 QUANTITY AND THE QUALITY TO DETERMINE WHETHER OR NOT THERE WAS
11:24:46 13 COPYING.

11:24:47 14 AND IF YOU LOOK AT THE EVIDENCE THAT DESCRIBES BOTH WHAT
11:24:51 15 ARISTA WAS TRYING TO DO, THE FACT THAT THEY WERE CHARACTERIZING
11:24:56 16 WHAT THEY WERE DOING AS IN TAKING THE IMPORTANT PARTS FROM THE
11:25:00 17 CLI, IT'S CLEAR THAT WHAT THEY WERE TAKING WAS THE SUBSTANTIAL
11:25:06 18 IMPORTANT PIECES OF THE CISCO CLI.

11:25:09 19 MR. NELSON: SO IF WE COULD PULL UP EXHIBIT 488,
11:25:13 20 MR. FISHER, WHICH IS THE USABILITY STUDY THAT WE'VE TALKED
11:25:18 21 ABOUT EARLIER, AND IF WE COULD GO TO PAGE 14.

11:25:26 22 Q. NOW SIR, WE TALKED ABOUT THIS ON THE LAST TIME YOU WERE ON
11:25:30 23 THE STAND. BUT CAN YOU REMIND US WHAT PAGE 14 SHOWS HERE?

11:25:33 24 A. SURE. PAGE 14 SHOWS A COUPLE OF THINGS. CERTAINLY
11:25:37 25 THERE'S THE GRAPH ON THE OVERALL PERFORMANCE.

11:25:40 1 I TALKED ABOUT THAT IN A LOT OF DETAIL ABOUT THE
11:25:43 2 SIMILARITY AND THE SYNTAX BETWEEN IOS AND EOS.

11:25:48 3 BUT WHAT'S ALSO IMPORTANT IS WHEN YOU LOOK AT JUDGING THE
11:25:52 4 SIMILARITY OF THE CLI'S BETWEEN THE TWO, WHAT'S IMPORTANT TO
11:25:56 5 LOOK AT IS THE OVERLAP IN THE IMPORTANT COMMANDS. AND THERE'S
11:26:00 6 A LINE AT THE END OF THAT FIRST PARAGRAPH THAT TALKS ABOUT ALL
11:26:04 7 TESTS WERE CHOSEN BEFORE ANY TESTS WERE RUN.

11:26:07 8 SO THIS WAS A SELECTION OF TESTS THAT WERE DETERMINED TO
11:26:11 9 BE IMPORTANT IN LOOKING AT THE SIMILARITY BETWEEN EOS AND IOS,
11:26:16 10 AS WELL AS NX-OS.

11:26:17 11 IN FACT, IN THE BACK OF THIS EXHIBIT, THERE ARE PAGES AND
11:26:21 12 PAGES OF WHAT THE COMMANDS WERE, WHAT THEY WERE ENTERED ON EACH
11:26:25 13 OF THE SWITCHES AND THEN THE OUTPUTS FROM ENTERING THESE
11:26:28 14 COMMANDS.

11:26:28 15 AND WHAT THIS USABILITY STUDY SHOWS IS ONE PIECE OF
11:26:32 16 EVIDENCE IS, THAT WHEN ARISTA WAS COPYING THE CISCO CLI, THEY
11:26:37 17 WERE TAKING THE IMPORTANT PIECES OF THAT CLI, THE PIECES THAT
11:26:41 18 WERE NEEDED SO THAT SOMEBODY COULD CUT AND PASTE THEIR
11:26:45 19 CONFIGURATION FROM CISCO AND HAVE IT IMMEDIATELY WORK ON AN
11:26:50 20 ARISTA SWITCH.

11:26:50 21 Q. SO LET'S STOP THERE ON THE CUT AND PASTE THE CONFIGURATION
11:26:56 22 FILES FROM THE CISCO SWITCH TO AN ARISTA SWITCH, HOW DOES THAT
11:26:59 23 TELL YOU THAT IT'S A NONTRIVIAL PART?

11:27:02 24 A. IT'S A NONTRIVIAL PART BECAUSE IF YOU CAN CUT AND PASTE
11:27:07 25 THAT CONFIGURATION, AND THE CONFIGURATION INCLUDES ALL OF THE

11:27:09 1 THINGS THAT YOU NEED TO DO TO GET THAT SWITCH UP AND RUNNING.

11:27:14 2 AND IF YOU HAVE AN ARISTA EMPLOYEE SAYING OR YOU HAVE A
11:27:16 3 REPORT FROM AT&T SAYING THAT THESE THINGS ARE CLOSE ENOUGH,
11:27:19 4 THAT THEY ARE CLONES OF EACH OTHER SO THAT YOU CAN CUT AND
11:27:24 5 PASTE THAT CONFIGURATION AND IT'S STILL GOING TO WORK ON AN
11:27:27 6 ARISTA PRODUCT, THEN THAT'S TELLING YOU THAT WHAT ARISTA HAS
11:27:30 7 CHOSEN TO COPY IS THE SIGNIFICANT PORTIONS OF THE CLI.

11:27:35 8 Q. NOW DO YOU UNDERSTAND WHETHER DR. BLACK EVEN OFFERED AN
11:27:43 9 OPINION ABOUT THE QUALITATIVE PORTION OF WHAT ARISTA TOOK?

11:27:50 10 A. I DO HAVE AN OPINION, AND THAT OPINION IS THAT HE DIDN'T
11:27:53 11 LOOK AT THAT. I DID NOT HEAR HIM TESTIFY THAT HE LOOKED AT ANY
11:27:58 12 ASPECT ABOUT THE QUALITY OR THE IMPORTANCE OF THE COMMANDS OF
11:28:01 13 THE 506 COMMANDS THAT ARISTA COPIED.

11:28:04 14 Q. NOW WE'VE HEARD SOME TESTIMONY ABOUT THE OVERALL NUMBER OF
11:28:07 15 COMMANDS IN IOS; YOU'VE HEARD THAT?

11:28:11 16 A. YES.

11:28:12 17 Q. NOW DO YOU THINK THAT THAT'S A PROPER ANALYSIS FOR
11:28:15 18 DETERMINING WHETHER WHAT WAS COPIED BY ARISTA WAS A TRIVIAL
11:28:19 19 AMOUNT?

11:28:20 20 A. NO. I MEAN, CISCO HAS LOTS AND LOTS OF DIFFERENT
11:28:25 21 PRODUCTS. ARISTA DOESN'T MAKE PRODUCTS THAT COMPETE ACROSS THE
11:28:29 22 BOARD WITH CISCO. AND SO ARISTA REALLY JUST TOOK THE COMMANDS
11:28:34 23 THAT WERE IMPORTANT TO ARISTA.

11:28:37 24 AND THE ANALOGY IS IF YOU'VE GOT AN ENCYCLOPEDIA A TO Z,
11:28:41 25 AND YOU HAVE IT WRITE A REPORT ON ELEPHANTS. AND SO YOU COPY

11:28:45 1 THE COUPLE OF PAGES FROM THE ENCYCLOPEDIA ON ELEPHANT, SOMEBODY
11:28:50 2 COULD COME IN AND SAY, WELL, THERE WERE 10,000 PAGES AND YOU
11:28:54 3 ONLY TOOK THESE TWO, SO THAT'S NOT A VERY SIGNIFICANT AMOUNT.

11:28:57 4 BUT THE REALITY IS THAT YOU WERE COPYING THE IMPORTANT
11:29:01 5 PIECES TO WHAT YOU NEEDED. AND IT WAS A SUBSTANTIAL PORTION OF
11:29:04 6 YOUR REPORT ON ELEPHANTS.

11:29:06 7 AND SO YOU HAVE TO CONSIDER THOSE TWO FACTORS TOGETHER
11:29:09 8 WHEN LOOKING AT THE QUESTION OF WHETHER OR NOT WHAT WAS TAKEN
11:29:13 9 WAS SUBSTANTIAL.

11:29:17 10 Q. SO NOW ON THAT POINT, I WOULD LIKE YOU TO PUT UP
11:29:23 11 EXHIBIT 4797 AS A DEMONSTRATIVE.

11:29:26 12 MR. NELSON: IF WE COULD PUT THAT UP, MR. FISHER.

11:29:31 13 Q. SO CAN YOU TELL US WHAT WE ARE LOOKING AT HERE, SIR?

11:29:35 14 A. SURE. THIS IS A TABLE THAT I PUT TOGETHER AS PART OF MY
11:29:38 15 REPORT. FOUR COLUMNS.

11:29:41 16 THE FIRST ONE IS THE EOS VERSION, THAT'S THE SOFTWARE THAT
11:29:44 17 RUNS ON THE ARISTA SWITCHES. THE NUMBER OF COMMANDS THAT WERE
11:29:50 18 COPIED FROM CISCO, OBVIOUSLY WE HAVE BEEN TALKING ABOUT 506
11:29:54 19 OVER AND OVER AGAIN.

11:29:56 20 THE EARLIEST VERSIONS DIDN'T COPY 506, BUT WHAT'S
11:30:00 21 IMPORTANT TO LOOK AT IS THAT THIRD COLUMN, WHICH IS THE TOTAL
11:30:04 22 NUMBER OF COMMANDS IN THE EOS USER MANUAL.

11:30:07 23 SO YOU ASKED ME QUESTIONS ABOUT THE ONE EXHIBIT WHERE WE
11:30:10 24 WENT THROUGH THE TABLE OF CONTENTS, AND THE EOS MANUAL HAS A
11:30:14 25 LIST OF ALL OF THE COMMANDS FOR THAT VERSION OF EOS THAT IT

11:30:17 1 THINKS ARE IMPORTANT AND IS DESCRIBING IN THE MANUAL.

11:30:21 2 SO THE COUNT IN THAT THIRD COLUMN COMES FROM THE USER
11:30:25 3 MANUAL FOR THAT PARTICULAR VERSION.

11:30:27 4 AND THEN YOU DO THE MATH THERE AND YOU SEE THAT IN THE
11:30:29 5 VERY FIRST VERSION, THAT 52 PERCENT OF THE COMMANDS THAT EOS
11:30:34 6 DESCRIBED IN ITS MANUAL CAME FROM CISCO.

11:30:38 7 AND YOU CAN LOOK AT THE PERCENTAGES DOWN THE COLUMN AS
11:30:42 8 HIGH AS 67 PERCENT, AND THEN CURRENTLY IN THE LAST VERSION
11:30:47 9 ANALYZED IT WAS 37 PERCENT.

11:30:49 10 Q. AND IF WE LOOK AT THAT LAST VERSION OF 37 PERCENT, WHAT
11:30:53 11 DOES THE 37 PERCENT REPRESENT, AGAIN?

11:30:56 12 A. IT REPRESENTS THE PERCENTAGE OF CISCO COMMANDS THAT WERE
11:31:01 13 COPIED, 506, FROM THE NUMBER OF COMMANDS THAT ARE LISTED IN THE
11:31:06 14 ARISTA EOS MANUAL. AND THEN YOU DO THE MATH.

11:31:09 15 Q. SO THEN, SIR, BASED UPON SOME OF THE TESTIMONY THAT WE'VE
11:31:16 16 HEARD HERE, DO YOU HAVE AN UNDERSTANDING OF WHY THERE ARE
11:31:21 17 COMMANDS ADDED OVER TIME INTO THE ARISTA EOS VERSIONS?

11:31:25 18 A. THAT THERE'S DIFFERENT FUNCTIONALITY, AND ARISTA CERTAINLY
11:31:29 19 HAS THE ABILITY TO CREATE ITS OWN COMMANDS FOR THAT ADDITIONAL
11:31:32 20 FUNCTIONALITY. AND SO THEY HAVEN'T COPIED EVERY SINGLE
11:31:37 21 COMMAND, BUT CERTAINLY A SUBSTANTIAL PORTION.

11:31:40 22 Q. NOW, IF WE CAN GO TO SLIDE 17 -- ACTUALLY, THIS SAYS 18.
11:31:50 23 NO, YOU ARE RIGHT, I THINK IT IS 18.

11:32:03 24 MR. NELSON: LET'S GO BACK ONE, MR. FISHER, TO 17.
11:32:07 25 AND WE WILL TALK ABOUT THAT ONE FIRST.

11:32:09 1 Q. OKAY. SO WHAT ARE WE SHOWING HERE ON SLIDE 17?

11:32:11 2 A. SURE. OF THERE'S TWO GRAPHS THAT GO TOGETHER, PAGES 17
11:32:15 3 AND 18. WHAT YOU SEE HERE IS THE SAME INFORMATION FROM THAT
11:32:19 4 LAST TABLE.

11:32:20 5 AND NOW IT'S CHARTED AS A BAR GRAPH, BUT IT ALSO SHOWS THE
11:32:25 6 TIME FOR WHEN EACH OF THESE MANUALS WAS PUBLISHED. SO YOU CAN
11:32:29 7 SEE THIS INFORMATION OVER TIME.

11:32:31 8 SO FROM 2009, THE NUMBER OF COMMANDS THAT ARISTA COPIED
11:32:35 9 FROM CISCO WAS RIGHT AROUND 100. AND THAT IS THE SAME AS WITH
11:32:41 10 THE TABLE.

11:32:42 11 AND THEN SLIDE 18, THE NEXT ONE, THEN SHOWS THE NUMBER OF
11:32:48 12 TOTAL COMMANDS THAT WERE IN EOS.

11:32:50 13 Q. SO IF WE JUST FOCUS HERE, LET'S GO BACK TO SLIDE 17, ON
11:32:55 14 VERSION 4.1.0; DO YOU SEE THAT?

11:32:59 15 A. 4.10.0?

11:33:03 16 Q. YEAH, I SAID THAT WRONG. 4.10.0. THANK YOU, SIR. LET'S
11:33:08 17 LOOK AT THAT ONE.

11:33:09 18 AND WHAT'S THE DATE THERE?

11:33:11 19 A. THAT IS JULY 19TH, 2012.

11:33:16 20 Q. SO IF WE GO BACK TO EXHIBIT 4797 THAT WE WERE LOOKING AT,
11:33:22 21 CAN YOU TELL US WHERE THAT FALLS INTO THE CHART?

11:33:27 22 A. 4.10.0 IS RIGHT THERE, THAT LINE.

11:33:32 23 Q. AND WHAT DO YOU SEE HAPPENING THERE AT 4.10.0?

11:33:37 24 A. WHAT YOU SEE IS A SIGNIFICANT JUMP IN THAT 2012 TIMEFRAME,
11:33:41 25 BOTH IN TERMS OF THE NUMBER OF COMMANDS THAT ARISTA HAS OVER

11:33:45 1 ALL, BUT ALSO A CORRESPONDING JUMP IN THE NUMBER OF COMMANDS
11:33:49 2 THAT THEY'VE COPIED FROM CISCO.

11:33:51 3 Q. AND DO YOU KNOW WHY THAT IS?

11:33:52 4 A. I DO. IT'S BASICALLY WHEN THEY INTRODUCED THEIR CLOUD
11:33:56 5 SWITCH WHERE THEY ADDED ALL OF THE ADDITIONAL FUNCTIONALITY TO
11:34:00 6 THE SWITCH.

11:34:01 7 Q. NOW, SIR, I WOULD LIKE TO TURN TO ANOTHER TOPIC HERE. AND
11:34:11 8 THAT CONCERNS SOME OF THE DR. BLACK'S OPINIONS REGARDING
11:34:15 9 WIDESPREAD USE OF THE CISCO CLI.

11:34:20 10 A. YES.

11:34:20 11 Q. DO YOU RECALL THAT TESTIMONY?

11:34:21 12 A. I DO.

11:34:23 13 Q. AND DO YOU BELIEVE THAT DR. BLACK'S DATA SHOW THAT THERE
11:34:29 14 WAS ACTUALLY WIDESPREAD USE OF THE CISCO CLI?

11:34:33 15 A. NO, IT DID NOT.

11:34:34 16 Q. AND CAN YOU TELL US WHY THAT IS?

11:34:36 17 A. SURE. SO AS I TESTIFIED EARLIER IN CROSS-EXAMINATION LAST
11:34:42 18 WEEK WHEN MR. VAN NEST WAS ASKING ME QUESTIONS, I HAVE REAL
11:34:47 19 PROBLEMS WITH THE METHODOLOGY THAT HE USED.

11:34:50 20 IF YOU THINK ABOUT THE NUMBER OF COMPANIES THAT DO
11:34:53 21 NETWORKING AND PRODUCE SWITCHES, SINCE THE TIME THAT THESE
11:34:57 22 COMMANDS WERE CREATED IN ABOUT 1986, THERE ARE HUNDREDS OF
11:35:01 23 COMPANIES.

11:35:03 24 AND, ESSENTIALLY, WHAT DR. BLACK DID IS HE NARROWED THE
11:35:07 25 NUMBER OF COMPANIES DOWN TO 18. AND THEN HE WANTED TO ARGUE

11:35:11 1 THAT BASED ON THAT SUB SAMPLING THAT THERE WAS WIDESPREAD USE.

11:35:14 2 SO I HAVE A PROBLEM WITH HOW HE GOT DOWN TO 18, BOTH
11:35:18 3 BECAUSE OF COMPANIES HE ELIMINATED, AND I ALSO HAVE A PROBLEM
11:35:22 4 BECAUSE HE COMBINED A BUNCH OF COMPANIES.

11:35:25 5 AND THE IDEA WAS THAT, WELL, SOME COMPANIES WERE PURCHASED
11:35:27 6 BY OTHERS AND THEY MERGED, BUT IT'S ALMOST LIKE SAYING, WELL,
11:35:33 7 I'M COULD DO A MEDICAL STUDY AND I HAVE A MARRIED COUPLE AND
11:35:37 8 BECAUSE ONE PERSON HAD SYMPTOMS, I'M JUST GOING TO GROUP THOSE
11:35:41 9 TWO PEOPLE TOGETHER WHO ARE MARRIED AND SAY THAT TOGETHER BOTH
11:35:43 10 OF THEM HAVE SYMPTOMS.

11:35:45 11 IT REALLY OVERREPRESENTS THE DEGREE TO WHICH ANY ONE
11:35:49 12 PARTICULAR COMPANY INCLUDES ANY OF THESE COMMANDS.

11:35:52 13 NOW THERE'S ALSO A THIRD CRITICISM IS THAT WHAT HE DID IS
11:35:56 14 HE GATHERED ALL OF THE MANUALS ACROSS THE ENTIRE COMPANY AND
11:36:00 15 COUNTED THE EXISTENCE OF A COMMAND, REGARDLESS OF WHAT PRODUCTS
11:36:04 16 IT WAS IN, WHETHER IT WAS RELATED TO CISCO, AND THAT CREATES
11:36:09 17 THIS KIND OF FALSE PERCEPTION THAT A COMMAND AT A COMPANY WAS
11:36:15 18 WIDESPREAD.

11:36:17 19 BUT EVEN IF YOU JUST LOOK AT THE DATA ITSELF AND LISTEN TO
11:36:22 20 HIS TESTIMONY, IT DOESN'T TELL YOU THAT THE COMMANDS ARE
11:36:25 21 WIDESPREAD. AND I CAN GO INTO THAT --

11:36:28 22 Q. YEAH. SO LET'S FOCUS ON THAT PIECE. SO SET ASIDE THE
11:36:33 23 CRITICISMS YOU HAD OF THE METHODOLOGY --

11:36:35 24 A. OKAY.

11:36:35 25 Q. -- AND LET'S JUST TAKE THE DATA SET THAT WAS PRESENTED,

11:36:38 1 THAT WE TALKED ABOUT, I THINK IT WAS WEDNESDAY.

11:36:45 2 WHAT DID THAT DATA SET SHOW YOU?

11:36:47 3 A. WELL, I THINK YOU BROUGHT THIS UP, MR. NELSON, IN
11:36:54 4 CROSS-EXAMINATION. IF YOU LOOK AT THE 506 COMMANDS, THERE'S A
11:36:57 5 WHOLE SET OF COMMANDS THAT CISCO AND ARISTA USE THAT NOBODY
11:37:01 6 ELSE USED.

11:37:03 7 SO EVEN JUST LOOKING AT THE DATA AND IGNORING THE
11:37:06 8 METHODOLOGY THAT GOT YOU THERE, EVEN IF WE ASSUME THAT DATA IS
11:37:09 9 ACCURATE AND REPRESENTATIVE, IT SHOWS THAT THE COMMANDS AREN'T
11:37:11 10 WIDESPREAD.

11:37:12 11 THERE'S SOME COMMANDS THAT SHOW, THAT WERE USED BY 18
11:37:15 12 VENDORS, BUT THEN THE PROBLEM WITH THAT IS IT'S NOT EVERYBODY.

11:37:20 13 SO YOU HAVE SOME THAT ARE ZERO, SOME THAT ARE CISCO,
11:37:23 14 ARISTA, AND ONE OTHER COMPANY, SOME THAT ARE CISCO AND ARISTA
11:37:27 15 AND TWO OTHER COMPANIES.

11:37:29 16 THAT'S NOT WIDESPREAD. AND IN FACT, DR. BLACK WOULDN'T
11:37:32 17 SAY WHAT NUMBER HE THOUGHT WAS REQUIRED FOR IT TO BE
11:37:37 18 WIDESPREAD.

11:37:37 19 Q. AND THE ANALYSIS THAT WAS DONE WAS ON INDIVIDUAL COMMANDS;
11:37:42 20 RIGHT?

11:37:42 21 A. YES.

11:37:42 22 Q. DID THAT DATA TELL YOU ANYTHING ABOUT THE COLLECTION OF
11:37:46 23 THE COMMANDS?

11:37:47 24 A. NO, IT DIDN'T.

11:37:49 25 Q. AND WHY IS THAT?

11:37:50 1 A. WELL, WHEN YOU JUST -- THIS GOES BACK TO HIS METHODOLOGY
11:37:55 2 WHERE HE TAKES ALL THE MANUALS FROM DELL, FOR EXAMPLE, AND
11:37:59 3 LOOKS AT ALL OF THE COMMANDS, IT DOESN'T TELL YOU ABOUT THE
11:38:03 4 COLLECTION OF THE 506 COMMANDS.

11:38:05 5 AND IF YOU LOOK AT THAT COLLECTION OF COMMANDS, THERE
11:38:07 6 ISN'T ANYONE WHO IS EVEN CLOSE TO ARISTA IN ARISTA'S COPYING OF
11:38:13 7 THE 506 COMMANDS.

11:38:15 8 Q. NOW IN RESPONSE TO DR. BLACK'S ANALYSIS THAT WE TALKED
11:38:19 9 ABOUT, DID YOU DO YOUR OWN STUDY?

11:38:21 10 A. NO, I DIDN'T NEED TO.

11:38:23 11 Q. AND WHY IS THAT?

11:38:24 12 A. WELL, FIRST OF ALL, IT'S DR. BLACK'S BURDEN TO SHOW THAT
11:38:29 13 THESE COMMANDS WOULD BE WIDESPREAD.

11:38:31 14 BUT EVEN LOOKING AT THE ANALYSIS THAT HE DID, HE TESTIFIED
11:38:35 15 THAT HE SPENT A THOUSAND HOURS COLLECTING ALL OF THIS
11:38:38 16 INFORMATION AND PUTTING THIS DATA TOGETHER. BUT HIS OWN DATA
11:38:42 17 SHOWS THAT THE COMMANDS AREN'T IN WIDESPREAD USE. SO I DIDN'T
11:38:45 18 NEED TO DO MY OWN STUDY.

11:38:47 19 Q. ALL RIGHT, SIR, AT THIS POINT I DON'T HAVE ANY FURTHER
11:38:50 20 QUESTIONS.

11:38:50 21 MR. NELSON: AND I WILL PASS THE WITNESS, YOUR HONOR.

11:38:52 22 THE COURT: THANK YOU.

11:38:54 23 MR. VAN NEST?

11:39:02 24 MR. VAN NEST: IT WILL TAKE US JUST A MOMENT,
11:39:05 25 YOUR HONOR, AND WE WILL BE UP AND READY.

11:39:07 1 THE COURT: OF COURSE.

11:39:40 2 **CROSS-EXAMINATION**

11:39:40 3 BY MR. VAN NEST:

11:39:45 4 Q. GOOD MORNING, LADIES AND GENTLEMEN. GOOD MORNING,
11:39:47 5 DR. ALMEROTH.

11:39:48 6 A. GOOD MORNING, SIR.

11:39:49 7 Q. I WANT TO START WITH SOME OF THE COMMENTS YOU MADE ABOUT
11:39:52 8 THE USABILITY STUDY.

11:39:55 9 A. YES, SIR.

11:39:55 10 Q. AND IF WE COULD PULL UP THE USABILITY STUDY THAT'S D IN
11:40:01 11 YOUR REPORT AT 141 TO 142. ACTUALLY, LET'S PULL UP TX 488.

11:40:15 12 THE USABILITY STUDY WAS DONE BACK IN JULY OF 2009; RIGHT.

11:40:24 13 A. THAT'S CORRECT.

11:40:25 14 Q. AND I THINK AS WE SHOWED ON YOUR CHARTS BACK IN 2009, THE
11:40:28 15 NUMBER OF COMMANDS YOU SAY WERE COPIED FROM CISCO WAS ABOUT
11:40:34 16 100; RIGHT?

11:40:35 17 A. I BELIEVE THAT'S CORRECT, YES.

11:40:36 18 Q. SO THIS USABILITY STUDY WAS DONE AT A MUCH EARLIER POINT
11:40:41 19 OF THE DEVELOPMENT OF THE ARISTA PRODUCT, CORRECT?

11:40:42 20 A. IT WAS.

11:40:43 21 Q. AND AT THAT TIME, THERE WERE A HUNDRED COMMANDS COPIED,
11:40:47 22 ACCORDING TO YOUR ANALYSIS?

11:40:49 23 A. THAT'S CORRECT.

11:40:50 24 Q. OKAY.

11:40:50 25 A. WE COULD CERTAINLY GO BACK AND LOOK AT THE PERCENTAGES, IT

11:40:55 1 WAS ABOUT THE SAME AS IT IS NOW.

11:40:57 2 Q. AND YOUR VIEW IS THAT THE COMMANDS THAT ARISTA USED FROM
11:41:01 3 CISCO WERE THE ONES THEY NEEDED TO USE, THE MOST IMPORTANT
11:41:04 4 ONES?

11:41:05 5 A. THAT'S CORRECT.

11:41:05 6 Q. AND THE ONES THAT FORMED SORT OF THE CORE OF THEIR SWITCH;
11:41:10 7 RIGHT?

11:41:10 8 A. THE CORE OF THE USER INTERFACE, THAT'S CORRECT.

11:41:13 9 Q. OKAY. AND THAT A HUNDRED OF THOSE WAS ENOUGH IN 2009 TO
11:41:18 10 BE SORT OF THE CORE OF THEIR USER INTERFACE; RIGHT?

11:41:21 11 A. THAT'S CORRECT. GIVEN THAT THEIR USER INTERFACE IN 2009
11:41:25 12 WAS QUITE SMALL, AND THE TOTAL NUMBER OF COMMANDS OVERALL WAS
11:41:29 13 VERY SMALL, THAT ABOUT 100 COMMANDS AT ABOUT 50 PERCENT WAS A
11:41:35 14 SIGNIFICANT PERCENTAGE.

11:41:35 15 Q. NOW THERE ARE MANY OF THE MAJOR VENDORS THAT COMPETE WITH
11:41:41 16 ARISTA AND CISCO THAT USE FAR MORE THAN 100 OF THESE SAME
11:41:45 17 COMMANDS YOU ARE COMPLAINING ABOUT HERE; RIGHT?

11:41:47 18 A. AGAIN, YOU HAVE TO LOOK AT THE ANALYSIS -- WELL, LET ME
11:41:52 19 SAY.

11:41:52 20 Q. CAN YOU ANSWER MY QUESTION?

11:41:53 21 A. YEAH, THAT'S WHAT I WAS GOING TO TRY AND DO.

11:41:56 22 THAT'S GENERALLY CORRECT, BUT YOU HAVE TO LOOK AT THE
11:41:59 23 TOTAL NUMBER OF COMMANDS THAT THEY SUPPORT.

11:42:01 24 AND REALLY, IF YOU LOOK AT 100 THEN VERSUS 506 NOW, AND AT
11:42:06 25 MOST IT'S A COUPLE OF HUNDRED, THAT REALLY IS A SIGNIFICANT

11:42:11 1 DIFFERENCE IN JUST SHEER VOLUME OF COMMANDS.

11:42:13 2 Q. LET'S TAKE A LOOK AT SLIDE 1, IF WE COULD. WE SAW THIS

11:42:21 3 YESTERDAY WITH MS. ELSTEN.

11:42:22 4 A. YES.

11:42:23 5 Q. YOU WERE IN COURT WHEN SHE TESTIFIED ABOUT THIS?

11:42:25 6 A. YES, SIR.

11:42:25 7 Q. AND THIS WAS A SUMMARY OF THE COMMANDS, JUST FROM AMONG

11:42:32 8 THE 500 YOU ARE COMPLAINING ABOUT, THAT ARE USED BY ALL OF

11:42:36 9 THESE OTHER COMPETITORS; RIGHT?

11:42:38 10 A. THAT'S CORRECT.

11:42:39 11 Q. NOW I KNOW YOU ARE NOT A MARKETING PERSON, DR. ALMEROTH,

11:42:45 12 BUT YOU KNOW THAT MANY OF THESE ARE SOME OF THE PRIMARY

11:42:48 13 COMPETITORS THAT CISCO AND ARISTA FACE; RIGHT?

11:42:52 14 A. NO. THERE'S MANY ON HERE THAT ARE NOT PRIMARY COMPETITORS

11:42:57 15 FOR CISCO AND ARISTA.

11:42:59 16 Q. I GUESS YOU ANSWERED IT A LITTLE DIFFERENTLY. SOME OF THE

11:43:03 17 PRIMARY COMPETITORS ARE CERTAINLY HERE; RIGHT?

11:43:07 18 A. I BELIEVE THAT'S CORRECT. I THINK THE PREFACE TO YOUR

11:43:09 19 QUESTION ABOUT I'M NOT A MARKETING GUY IS A GOOD QUALIFICATION.

11:43:12 20 Q. HP, THAT'S ONE OF THE MAJOR COMPETITORS; RIGHT?

11:43:16 21 A. I THINK YOU HAVE TO GO BACK AND TALK TO THE MARKETING

11:43:22 22 PEOPLE.

11:43:22 23 Q. AND THEY SHOW ON THIS CHART, AT LEAST 129 OF THE SAME 500,

11:43:27 24 THEY ARE IN USE EVEN NOW TODAY; RIGHT?

11:43:29 25 A. THAT'S CORRECT. A SMALL FRACTION OF THE 506.

11:43:32 1 Q. AND D-LINK, 306, IN USE TODAY, JUST FROM AMONG THE 500
11:43:38 2 THAT YOU ARE COMPLAINING ABOUT, 300 OF THEM ARE IN USE TODAY
11:43:42 3 WITH D-LINK, THAT'S ANOTHER SIGNIFICANT COMPETITOR; RIGHT?

11:43:46 4 A. AGAIN, YOU WOULD HAVE TO ASK THE MARKETING PEOPLE. I
11:43:49 5 LISTENED TO HER TESTIMONY. I DIDN'T HEAR HER SAY D-LINK WAS A
11:43:53 6 MAJOR COMPETITOR.

11:43:54 7 Q. HOW ABOUT DELL?

11:43:55 8 A. DELL MAKES LOTS OF PRODUCTS; RIGHT. HUGE NUMBER OF
11:43:59 9 PRODUCT THAT IS HAVE NOTHING TO DO WITH CISCO OR --

11:44:02 10 Q. LET'S TAKE A PAUSE.

11:44:03 11 MR. VAN NEST: COULD WE PUT UP MS. ELSTEN'S SLIDE, IT
11:44:08 12 MAY BE THE LAST ONE IN THE SET, MR. DAHM. WE WILL COME BACK TO
11:44:12 13 THIS. IT'S THE MARKET SHARE SLIDE.

11:44:15 14 Q. YOU WERE HERE FOR HER TESTIMONY YESTERDAY?

11:44:18 15 A. I WAS.

11:44:18 16 Q. HERE WE GO. THIS WAS HER TESTIMONY. SHE ANALYZED THE
11:44:33 17 MARKET. YOU SEE DELL THERE?

11:44:34 18 A. I DO.

11:44:35 19 Q. JUNIPER IS THERE?

11:44:36 20 A. I DO.

11:44:36 21 Q. HP IS THERE?

11:44:38 22 A. IT IS.

11:44:38 23 Q. ARISTA IS THERE?

11:44:39 24 A. YES.

11:44:40 25 Q. OKAY. DELL, JUNIPER, HP, SO LET'S GO BACK TO MY SLIDE

11:44:47 1 ONE, MR. DAHM.

11:44:49 2 HP, WE TALKED ABOUT. DELL, 269 OF THE SAME COMMANDS YOU
11:44:55 3 ARE COMPLAINING ABOUT ARE FOUND IN THE DELL ETHERNET SWITCH;
11:45:00 4 RIGHT.

11:45:00 5 A. FOR DELL, 269, THAT'S CORRECT.

11:45:04 6 Q. SO THEY OBVIOUSLY TOOK THE CORE OF THE SYSTEM TOO; RIGHT?

11:45:09 7 A. NO. AGAIN, I THINK IT'S IMPORTANT TO LOOK AT WHAT ARISTA
11:45:16 8 IS SAYING TO ITS CUSTOMERS ABOUT TAKING THE CORE SET. THAT
11:45:21 9 IT'S 99.99 PERCENT THE SAME --

11:45:25 10 Q. EXCUSE ME, DR. ALMEROOTH.

11:45:26 11 A. I'M TRYING TO ANSWER YOUR QUESTION. THERE'S NONE OF THAT
11:45:30 12 SAME KIND OF TESTIMONY OR PUBLICITY THAT'S BEEN SHOWN TO COME
11:45:34 13 FROM DELL.

11:45:35 14 Q. NOW JUNIPER USES 218, THEY WERE ONE OF THE OTHER MAJOR
11:45:40 15 COMPETITORS, 218 OF THE SAME SET OF 500; RIGHT?

11:45:45 16 A. NO. SO HERE'S AN IMPORTANT DISTINCTION, JUNIPER FOR
11:45:49 17 JUNOS SE, IS NOT A MAJOR COMPETITOR OF CISCO.

11:45:52 18 IF YOU LOOK AT JUNOS, I THINK THE NUMBER OF OVERLAP WAS
11:45:55 19 CLOSE TO ZERO, IF NOT 5 OR 6 COMMANDS. SO THIS JUNOSE IS
11:46:00 20 REALLY INACCURATE TO ATTRIBUTE TO JUNIPER IN TOTALITY AND SAY
11:46:05 21 THAT IT'S A COMPETITOR.

11:46:06 22 Q. WELL, YOU HAVE -- JUNIPER MAKES A NUMBER OF DIFFERENT
11:46:09 23 SWITCHES, RIGHT, IN DIFFERENT PRODUCTS?

11:46:11 24 A. THEY DO.

11:46:12 25 Q. AND MR. SHAFER WAS HERE YESTERDAY TO TESTIFY ABOUT THAT?

11:46:15 1 A. HE WAS.

11:46:17 2 Q. AND DO YOU RECALL HIM TESTIFYING THAT THERE WERE HUNDREDS
11:46:20 3 OF COMMANDS IN JUNOS-E THAT WERE THE SAME AS CORRESPONDING
11:46:26 4 COMMANDS IN CISCO?

11:46:27 5 A. THAT'S RIGHT. THE JUNOS-E OPERATING SYSTEM THAT'S BEEN
11:46:31 6 END OF LIFE'D.

11:46:33 7 Q. BUT CLEARLY, YOU WERE HERE WHEN HE TOLD THE JURY THAT IN
11:46:37 8 THE JUNOS-E PRODUCT, THERE ARE HUNDREDS OF COMMANDS THAT ARE
11:46:41 9 THE SAME AS WHAT COMMANDS ARE OFFERED IN CISCO; RIGHT? YOU
11:46:47 10 HEARD THAT TESTIMONY?

11:46:48 11 A. I DID. IT'S CONSISTENT WITH THE 218 FOR THIS SIDE SET OF
11:46:53 12 OPERATING SYSTEMS FROM THE ACQUISITION.

11:46:56 13 Q. NOW I THINK YOU ACKNOWLEDGE THIS IN YOUR TESTIMONY. BUT
11:47:04 14 YOU DID NOT DO, ALTHOUGH YOU CRITICIZED DR. BLACK, YOU DIDN'T
11:47:07 15 GO OUT AND DO ANY SURVEY OF COMPETITORS AND WHAT THEY WERE
11:47:11 16 USING; IS THAT RIGHT?

11:47:12 17 A. THAT'S CORRECT. I TESTIFIED EXACTLY WHY I DIDN'T NEED TO
11:47:16 18 DO THAT.

11:47:16 19 Q. BUT YOU HAD ALL THE SAME DATA AVAILABLE TO YOU THAT HE
11:47:20 20 DID, CORRECT?

11:47:20 21 A. I SUSPECT AT SOME POINT, YES.

11:47:26 22 Q. YEAH. IN OTHER WORDS, THE MANUALS HE LOOKED AT, THE
11:47:30 23 MATERIAL THAT HE GATHERED, THE STUFF WE WENT OUT AND SUBPOENAED
11:47:35 24 FROM CUSTOMERS, YOU HAD ALL OF THAT AVAILABLE TO YOU AS WELL;
11:47:37 25 RIGHT?

11:47:37 1

A. YES.

11:47:38 2

Q. BUT YOU ELECTED TO DO NOTHING, WHATSOEVER, TO ANALYZE THAT INFORMATION; RIGHT, DR. ALMEROTH?

11:47:41 3

11:47:43 4

A. THAT IS EXACTLY RIGHT. I DIDN'T WANT TO WASTE CISCO'S MONEY, I DIDN'T NEED TO.

11:47:46 5

11:47:47 6

Q. SO COULD WE HAVE TX 9049. BLOW THAT UP.

11:48:00 7

YOU WERE HERE WHEN DR. BLACK TESTIFIED, LET ME BACK UP.

11:48:04 8

11:48:07 9

YOU UNDERSTAND THAT THESE NUMBERS WE HAVE BEEN LOOKING AT, HE STARTS WITH THE 500 YOU ARE COMPLAINING ABOUT AND ANALYZES THOSE; RIGHT? IN THE EARLIER ARE CHARTS WE LOOKED AT.

11:48:11 10

11:48:15 11

A. YES.

11:48:15 12

11:48:20 13

Q. YEAH. DELL WAS DIFFERENT. DELL, HE ACTUALLY WENT OUT, WROTE A PROGRAM, LOOKED AT THE WHOLE SYSTEM TO SEE HOW MANY COMMANDS IN TOTAL OVERLAPPED WITH CISCO, CORRECT?

11:48:25 14

11:48:29 15

A. THAT WAS WHAT HE SAID HIS METHODOLOGY WAS. ULTIMATELY, THE RESULTS THAT YOU SHOW HERE ARE VERY FLAWED AND MISREPRESENTATIVE. AT LEAST, HERE'S ONE GOOD REASON, IF YOU LOOK AROUND --

11:48:34 16

11:48:39 17

11:48:42 18

Q. EXCUSE ME, DR. ALMEROTH. EXCUSE ME, SIR.

11:48:43 19

11:48:47 20

WE HAVE TIME LIMITS. YOUR LAWYERS WILL HAVE A CHANCE TO EXAMINE YOU. I JUST WANT TO KNOW YOU WERE HERE WHEN HE TESTIFIED TO WHAT HE DID TO ANALYZE DELL IN TOTAL; RIGHT?

11:48:51 21

11:48:55 22

11:48:58 23

A. YES, I WAS.

11:48:59 24

11:49:06 25

Q. AND THE RESULT THAT HE GOT WAS 1600 COMMANDS IN COMMON WITH CISCO; RIGHT?

11:49:07 1 A. NO. THAT IS ABSOLUTELY INCORRECT BECAUSE HE COUNTED
11:49:10 2 CERTAIN COMMANDS MULTIPLE TIMES THAT INCLUDED PARAMETERS, AND
11:49:14 3 SO WHEN YOU GO THROUGH AND REMOVE ALL OF THE REDUNDANCIES, IT'S
11:49:18 4 SIGNIFICANTLY LOWER THAN 1600.

11:49:20 5 Q. NOW YOU TESTIFIED THAT YOU DIDN'T BELIEVE THAT THERE WAS
11:49:30 6 WIDESPREAD USE, NOTWITHSTANDING DR. BLACK'S ANALYSIS.

11:49:33 7 COULD I HAVE UP TX 9061. YOU SAW THIS IN DR. BLACK'S
11:49:45 8 REPORT, CORRECT?

11:49:46 9 A. YES.

11:49:47 10 Q. IT'S AN ANALYSIS OF ALL OF THE COMMANDS THAT YOU ARE
11:49:51 11 ASSERTING IN THIS CASE; RIGHT?

11:49:54 12 A. IT IS.

11:49:55 13 Q. AND THIS IS ANOTHER ONE OF THE ANALYSIS THAT DR. BLACK DID
11:49:59 14 THAT YOU DIDN'T PRESENT ANY DATA TO DISPUTE; RIGHT?

11:50:02 15 A. NO, I DIDN'T NEED TO.

11:50:04 16 Q. AND THAT'S BECAUSE YOU DIDN'T GO OUT AND LOOK AT ANY OF
11:50:07 17 THESE OTHER COMPETITORS AS YOU TESTIFIED PREVIOUSLY; RIGHT?

11:50:12 18 A. NO, I DID LOOK AT OTHER COMPETITORS, BUT I CERTAINLY
11:50:16 19 DIDN'T SPEND A THOUSAND HOURS PUTTING TOGETHER SOME KIND OF
11:50:19 20 SURVEY THAT SHOWS IT'S NOT WIDESPREAD USE.

11:50:21 21 Q. NOW WHAT THIS SHOWS IS IT'S A COMPARISON OF ALL THE
11:50:25 22 COMMANDS, ON THIS SHEET, WE DISCUSSED SOME OF THEM, OF COURSE,
11:50:32 23 LOOK AT WHETHER BROCADE, DELL, JUNIPER HP AND EXTREME USED THE
11:50:36 24 SAME COMMANDS YOU ARE COMPLAINING ABOUT HERE; RIGHT?

11:50:39 25 A. YES.

11:50:39 1 Q. AND WE ALREADY ESTABLISHED THAT DELL, JUNIPER, AND HP,
11:50:42 2 THEY ARE ALL ON THE SHEETS THAT WE SAW, THE MARKET ANALYSIS
11:50:46 3 THAT MS. ELSTEN DID; RIGHT?

11:50:48 4 A. NO. AGAIN, IF YOU LOOK AT THAT MARKET ANALYSIS AND THE
11:50:54 5 SHARE OF EACH OF THESE CUSTOMERS, IN FACT, I THINK DELL WAS
11:50:57 6 2.3 PERCENT, AND THAT'S NOT A VERY SIGNIFICANT MARKET SHARE.

11:51:01 7 WHAT'S ALSO IMPORTANT IS FROM THAT STREAM, AND WHAT IT
11:51:04 8 SHOWED IS THE COMPETITION FOR JUNIPER, WAS PRIMARILY JUNOS.

11:51:08 9 AND SO HERE YOU ARE SHOWING ONLY JUNOS-E. SO IT'S A
11:51:12 10 LITTLE BIT DISINGENUOUS TO SUGGEST THAT JUNIPER'S MARKET SHARE
11:51:16 11 HAS ANYTHING TO DO WITH JUNOS-E. WHEN YOU COMPARE IT TO JUNOS,
11:51:21 12 THERE'S NO OVERLAP.

11:51:22 13 Q. BUT DR. ALMEROOTH, YOU TESTIFIED EARLIER THAT THERE WERE
11:51:25 14 LOTS OF OTHER VENDORS OUT THERE, BUT OF COURSE YOU DIDN'T GO
11:51:30 15 LOOK AT THEIR INFORMATION EITHER; RIGHT?

11:51:32 16 A. NO, I DIDN'T NEED TO. IN SOME CASES --

11:51:35 17 Q. AND THEREFORE --

11:51:37 18 A. SORRY, LET ME FINISH.

11:51:38 19 IN SOME CASES THEY DON'T EVEN HAVE A CLI. I MEAN, APPLE
11:51:41 20 SELLS SWITCHES AS PART OF ITS AIRPORT PRODUCT. THAT DOESN'T
11:51:45 21 HAVE A CLI.

11:51:46 22 SO ALREADY, DR. BLACK HAS REMOVED SWITCH PRODUCTS THAT
11:51:51 23 DON'T USE ANY OF THE CLI COMMANDS.

11:51:53 24 Q. SO IN YOUR VIEW, IT WOULD BE A REASONABLE, LOGICAL THING
11:51:57 25 TO SPEND MONEY ON, TO LOOK AT A COMPARISON WITH A COMPANY THAT

11:52:01 1 DOESN'T USE THE CLI AT ALL?

11:52:02 2 A. ABSOLUTELY. IF YOU ARE TRYING TO ARGUE WHETHER THERE'S

11:52:05 3 WIDESPREAD USE, YOU HAVE TO LOOK AT EVERYBODY. YOU CAN'T JUST

11:52:08 4 LOOK AT THE PEOPLE WHO HAVE A CLI WITH SOME COMMANDS IN COMMON.

11:52:12 5 BUT THAT GIVES YOU A DISTORTED PERSPECTIVE OF HOW COMMON

11:52:16 6 THOSE COMMANDS ACTUALLY ARE.

11:52:17 7 Q. SO THERE ARE MANY, MANY, MANY COMMANDS IN THIS ANALYSIS

11:52:21 8 THAT DR. BLACK DID IN WHICH THREE, FOUR, OR VIRTUALLY ALL OF

11:52:27 9 THE FOLKS LISTED HERE USE THE SAME COMMAND; RIGHT?

11:52:30 10 A. NO. I WOULDN'T SAY THERE'S MANY, MANY.

11:52:33 11 Q. SO FOR EXAMPLE --

11:52:35 12 A. AND WHEN YOU SELF-SELECT DOWN TO FIVE, YES, THERE WOULD BE

11:52:39 13 SOME OVERLAP, BUT THAT DOESN'T DEMONSTRATE WIDESPREAD USE OF

11:52:42 14 THE COMMANDS.

11:52:43 15 Q. SO LET ME ASK, "BOOT SYSTEM," THAT'S USED BY ALL FIVE OF

11:52:46 16 THE FOLKS ON THIS CHART; RIGHT?

11:52:48 17 A. YES.

11:52:49 18 Q. "CLOCK SET," USED BY ALL FIVE?

11:52:52 19 A. THAT'S AN EXAMPLE, YES.

11:52:54 20 Q. RIGHT. AND THOSE ARE BOTH COMMANDS YOU ARE ASSERTING AS

11:52:58 21 ORIGINAL AND CREATIVE IN THIS LAWSUIT; RIGHT?

11:53:00 22 A. OH, ABSOLUTELY.

11:53:01 23 Q. BASED ON THE LOW BAR THAT YOU SET, THESE ARE BOTH COMMANDS

11:53:04 24 YOU BELIEVE ARE ORIGINAL AND CREATIVE?

11:53:06 25 A. ABSOLUTELY. AND THERE'S BEEN NO EVIDENCE PRESENTED THAT

11:53:10 1 THOSE EXISTED, THOSE SPECIFIC COMMANDS EXISTED BEFORE THE TIME
11:53:14 2 OF CREATION.

11:53:15 3 Q. "IP ADDRESS," THAT'S USED BY ALL FIVE?
11:53:19 4 A. IT IS.

11:53:19 5 Q. "IP ROUTE," THAT'S USED BY ALL FIVE?
11:53:22 6 A. THAT'S CORRECT.

11:53:23 7 AND YOU CAN POINT TO LOTS OF EXAMPLES AND HIGHLIGHT THEM,
11:53:27 8 BUT WHEN YOU SELF-SELECT IT DOWN TO FIVE, IT DOESN'T SHOW
11:53:31 9 WIDESPREAD USE.

11:53:31 10 Q. WE ARE GOING TO KEEP GOING HERE, DR. ALMEROOTH.
11:53:35 11 "IPV6" THAT'S USED BY ALL FIVE; RIGHT?
11:53:38 12 A. NO. THAT'S NOT A COMMAND.

11:53:44 13 Q. "ROUTER BGP," ALL FIVE?
11:53:48 14 A. YES.

11:53:48 15 Q. "SHOW CLOCK," ALL FIVE?
11:53:51 16 A. YES.

11:53:52 17 Q. "SHOW INTERFACES," ALL FIVE?
11:53:54 18 A. YES.

11:53:54 19 Q. "SHOW IP INTERFACE," ALL FIVE?
11:53:56 20 A. YES.

11:54:03 21 Q. "SHOW IP ROUTE," ALL FIVE?
11:54:05 22 A. YES.

11:54:08 23 Q. "SHOW IPV6 ROUTE," ALL FIVE?
11:54:11 24 A. IT'S NOT -- THERE IT IS. YES. DEFINITELY SOME EXAMPLES
11:54:20 25 HERE.

11:54:20 1 Q. "SHOW USERS," ALL FIVE?

11:54:22 2 A. YES.

11:54:22 3 Q. "SHOW VERSION," ALL FIVE?

11:54:23 4 A. YES.

11:54:24 5 Q. "SNMP SERVER," ALL FIVE?

11:54:26 6 A. THAT'S NOT A COMMAND ON THE LIST.

11:54:34 7 Q. ALL RIGHT. THAT MAY BE ON ANOTHER PAGE.

11:54:36 8 IN FACT, LOOKING AT DR. BLACK'S ANALYSIS OVERALL, MORE
11:54:43 9 THAN 170 OF THE COMMANDS THAT YOU DISPUTE IN THIS LAWSUIT ARE
11:54:47 10 USED BY FOUR OR MORE OF CISCO'S MAJOR COMPETITORS, NOT
11:54:51 11 INCLUDING ARISTA; RIGHT?

11:54:52 12 MR. NELSON: YOUR HONOR, JUST SO THE RECORD IS CLEAR,
11:54:54 13 I THINK HE MISSTATED THAT. 117, NOT 170.

11:55:00 14 THE WITNESS: YEAH, THIS SLIDE SHOWS 117 AT THE
11:55:03 15 BOTTOM.

11:55:03 16 MR. VAN NEST: AH. FAIR ENOUGH.

11:55:06 17 CORRECT, DR. ALMEROOTH?

11:55:08 18 THE WITNESS: THAT'S CORRECT. WHEN YOU SELF SELECT
11:55:12 19 IT DOWN TO FIVE OUT OF HUNDREDS OF SWITCH VENDORS AND ROUTING
11:55:16 20 COMPANIES, SURE.

11:55:17 21 BY MR. VAN NEST:

11:55:18 22 Q. NOW YOU TALKED A LITTLE BIT ABOUT HOCKEY?

11:55:24 23 A. YES, SIR.

11:55:25 24 Q. AND HOCKEY WORDS; RIGHT?

11:55:28 25 A. YES.

11:55:29 1 Q. NOW OBVIOUSLY THESE COMMANDS AREN'T A NEWSPAPER STORY,
11:55:34 2 THEY ARE COMMANDS USED IN A COMPUTER SYSTEM; RIGHT?

11:55:36 3 A. YES.

11:55:37 4 Q. AND THEIR PURPOSE IS TO PROVIDE INFORMATION TO A SWITCH;
11:55:44 5 RIGHT?

11:55:44 6 A. NOT TECHNICALLY, I'M NOT GOING TO QUIBBLE WITH YOU, BUT I
11:55:50 7 DON'T THINK THAT'S QUITE RIGHT.

11:55:52 8 Q. AND IN SOME CASES WITH A SHOW COMMAND TO OBTAIN
11:55:55 9 INFORMATION FROM A SWITCH; RIGHT?

11:55:56 10 A. YES.

11:55:57 11 Q. SO THEY ARE ESSENTIALLY INFORMATIONAL AND FUNCTIONAL IN
11:56:00 12 NATURE AS TO WHAT THEY DO?

11:56:02 13 A. NO. NO. NOT THE COMMANDS. THE UNDERLYING FUNCTIONS,
11:56:07 14 THERE'S FUNCTIONS BUT THE COMMANDS THEMSELVES ARE CERTAINLY NOT
11:56:11 15 FUNCTIONAL.

11:56:12 16 Q. WELL THEY ARE CERTAINLY NOT SHAKESPEARE?

11:56:14 17 A. THEY ARE NOT SHAKESPEARE.

11:56:17 18 Q. THEY ARE USED BY NETWORK OPERATORS TO ENTER COMMANDS INTO
11:56:20 19 A COMPUTER SYSTEM; RIGHT?

11:56:22 20 A. SORRY, YOU WERE TALKING OVER ME. I DIDN'T HEAR THE FIRST
11:56:24 21 PART OF THE QUESTION.

11:56:27 22 Q. THEY ARE USED BY NETWORK OPERATORS TO ENTER COMMANDS TO A
11:56:32 23 NETWORK SYSTEM; RIGHT?

11:56:33 24 A. NO, THAT DOESN'T MAKE SENSE. THE COMMANDS ARE WHAT ARE
11:56:36 25 ENTERED.

11:56:36 1 Q. ALL RIGHT. THAT'S -- THE COMMANDS ARE WHAT NETWORK USERS,
11:56:43 2 NETWORK OPERATORS USE AND ENTER THEM INTO THE SYSTEM TO MAKE
11:56:48 3 CERTAIN THINGS HAPPEN, RIGHT?

11:56:48 4 A. THEY DO ENTER COMMANDS, AND AS A RESULT OF ENTERING THOSE
11:56:51 5 COMMANDS, SOMETHING COULD HAPPEN.

11:56:52 6 Q. NOW, I THINK AS WE ESTABLISHED LAST WEEK, MANY OF THE
11:56:55 7 TERMS THAT ARE USED IN THE COMMANDS AT ISSUE ARE THE SAME TERMS
11:56:59 8 THAT ARE USED IN INDUSTRY NETWORKING PROTOCOLS; DO YOU RECALL
11:57:03 9 THAT?

11:57:03 10 A. YES, SOME OF THE INDIVIDUAL TERMS DO APPEAR IN STANDARDS.

11:57:06 11 Q. RIGHT. AND YOU CONCEDE, I THINK YOU SAID THAT CISCO IS
11:57:10 12 NOT MAKING ANY CLAIM BASED ON AN INDIVIDUAL TERM; RIGHT?

11:57:14 13 A. OH, THAT'S CORRECT.

11:57:15 14 Q. AND ALSO, I'M NOT SURE WE COVERED THIS, BUT CISCO IS NOT
11:57:19 15 MAKING ANY CLAIM BASED ON AN INDIVIDUAL COMMAND EITHER; ISN'T
11:57:23 16 THAT RIGHT?

11:57:23 17 A. WELL, IN INDIVIDUAL WORD, THAT'S A COMMAND, THAT'S
11:57:27 18 CORRECT.

11:57:28 19 Q. BUT YOU'RE --

11:57:30 20 A. SORRY, I UNDERSTAND WHAT YOU ARE GOING TO SAY, BUT GO
11:57:33 21 AHEAD.

11:57:33 22 Q. LET ME JUST GET IT CLEAR.

11:57:34 23 CISCO IS NOT CLAIMING PROTECTION FOR ANY INDIVIDUAL
11:57:38 24 MULTIWORD COMMAND; RIGHT?

11:57:40 25 A. IT'S HARD FOR ME TO SAY. I BELIEVE THAT YOU HAVE THE

11:57:49 1 COLLECTION OF THE COMMANDS.

11:57:50 2 Q. RIGHT.

11:57:51 3 A. I BELIEVE THAT THAT'S WHAT'S BEEN CENTRAL, BUT MY OPINIONS

11:57:55 4 MIGHT APPLY EQUALLY TO THE INDIVIDUAL COMMANDS THEMSELVES.

11:57:58 5 Q. BUT YOU UNDERSTAND THAT THE CLAIM IS FOR THE COLLECTION OF

11:58:02 6 COMMANDS IN IOS, NOT FOR ANY INDIVIDUAL MULTIWORD COMMAND;

11:58:07 7 RIGHT?

11:58:07 8 A. YOU ARE INTO THE LEGAL ASPECTS OF WHAT THE CLAIM IS.

11:58:11 9 Q. ALL RIGHT.

11:58:12 10 A. YOU WOULD HAVE TO TALK TO THE LAWYERS.

11:58:14 11 Q. FAIR ENOUGH.

11:58:15 12 NOW YOU WOULD AGREE WITH ME THAT, AT LEAST SOME OF THE

11:58:19 13 TERMS WE REVIEWED LAST WEEK THAT APPEAR IN THE COMMANDS, THEY

11:58:23 14 ALSO COME FROM INDUSTRY STANDARD PROTOCOLS; RIGHT.

11:58:26 15 A. SOME OF THE INDIVIDUAL TERMS AND WORDS, YES, COME FROM THE

11:58:29 16 STANDARD.

11:58:29 17 Q. AND YOU WOULD EXPECT THAT BECAUSE WE ARE TALKING ABOUT

11:58:32 18 NETWORKING AND WE ARE TALKING ABOUT NETWORKING PROTOCOLS IN

11:58:36 19 THIS CASE; RIGHT?

11:58:37 20 A. I THINK THAT'S TRUE.

11:58:38 21 Q. OKAY. NOW OF COURSE WHEN WE ARE TALKING HOCKEY, WE ARE

11:58:43 22 TALKING ABOUT ICING THE PUCK; RIGHT?

11:58:44 23 A. IT COULD BE.

11:58:45 24 Q. OR SLAP SHOT?

11:58:47 25 A. YES.

11:58:47 1 Q. YOU TYPICALLY WOULDN'T BE TALKING ABOUT NINE IRONS IN A
11:58:51 2 HOCKEY GAME, WOULD YOU?

11:58:52 3 A. YOU MIGHT TALK ABOUT THE BLUE LINE, YOU MIGHT TALK ABOUT
11:58:55 4 OTHER ASPECTS THAT ARE STANDARD FOR THE RANGE.

11:58:58 5 Q. BUT NOT A NINE IRON; RIGHT?

11:59:00 6 A. OH, I SEE, FROM GOLF, NO.

11:59:03 7 Q. AND YOU WOULDN'T BE TALKING ABOUT A FIELD GOAL IN HOCKEY?

11:59:06 8 A. THAT'S CORRECT.

11:59:06 9 Q. AND THEREFORE, THE LANGUAGE YOU USE IN HOCKEY IS THE
11:59:10 10 LANGUAGE OF HOCKEY; RIGHT?

11:59:11 11 A. SOME PARTS OF IT, THAT'S CORRECT.

11:59:14 12 Q. AND THEREFORE, THE LANGUAGE YOU USE IN NETWORKING
11:59:17 13 COMMANDS, THAT'S THE LANGUAGE OF NETWORKING; RIGHT?

11:59:20 14 A. SOME PARTS OF IT, THAT'S CORRECT. AND IN EITHER CASE, YOU
11:59:25 15 STILL HAVE ORIGINALITY.

11:59:26 16 Q. NOW LET'S TALK ABOUT YOUR TESTIMONY ON USAGE OVER TIME.

11:59:30 17 MR. VAN NEST: CAN I HAVE UP DR. ALMEROOTH'S SLIDE 16,
11:59:33 18 PLEASE.

11:59:37 19 Q. I THINK YOU DISPLAYED THIS TO THE JURY AND TALKED ABOUT IT
11:59:39 20 A LITTLE BIT.

11:59:40 21 I JUST WANT TO CLARIFY THE COMMAND NUMBERS THAT YOU PLACED
11:59:45 22 ON THIS CHART, THE ONES IN THE MIDDLE COLUMN, THOSE CAME FROM
11:59:48 23 THE USER'S MANUAL; RIGHT?

11:59:52 24 A. YOU MEAN THE ARISTA USER MANUAL?

11:59:55 25 Q. YES, THAT'S WHAT I MEAN?

11:59:56 1 A. YES, YES.

11:59:57 2 Q. YOU LIMITED YOUR ANALYSIS THERE TO THE USER MANUAL IN
12:00:00 3 COMING UP WITH THE NUMBERS; RIGHT?

12:00:02 4 A. THAT'S CORRECT. THAT WAS -- THERE'S A TABLE OF CONTENTS
12:00:05 5 AND IT SAYS LIST OF COMMANDS, SO THAT SEEMED THE APPROPRIATE
12:00:09 6 NUMBER TO USE.

12:00:09 7 Q. OKAY. AND YOU KNEW THAT THE SWITCH ITSELF SUPPORTED MANY
12:00:14 8 MORE COMMANDS THAN THE ONES THAT ARE LISTED IN THE TABLE OF
12:00:16 9 CONTENTS; RIGHT?

12:00:17 10 A. THERE MIGHT HAVE BEEN SOME OTHERS, BUT I DON'T THINK IT'S
12:00:20 11 MANY MORE. AND THERE'S A DISCREPANCY IN HOW YOU CAN COUNT, FOR
12:00:25 12 EXAMPLE, WHETHER OR NOT YOU INCLUDE PARAMETERS OR NOT.

12:00:28 13 SO WHEN YOU GO TO THE AUTHORITATIVE SOURCE, WHAT ARISTA
12:00:32 14 TELLS ITS CUSTOMERS ABOUT WHAT THE COMMANDS ARE, THAT COMES
12:00:37 15 FROM THE USER MANUAL.

12:00:38 16 Q. BUT YOU DIDN'T DO ANYTHING WITH THE SWITCH ITSELF TO
12:00:42 17 DOWNLOAD THE COMMANDS ACTUALLY SUPPORTED BY AN ARISTA SWITCH;
12:00:46 18 RIGHT?

12:00:46 19 A. I THINK IT WOULD HAVE BEEN VERY DIFFICULT TO IDENTIFY A
12:00:51 20 COMPLETE SET THAT THE SWITCH MIGHT HAVE SUPPORTED THERE MIGHT
12:00:58 21 BE UNADVERTISED COMMANDS OR THINGS LIKE THAT.

12:01:00 22 Q. OKAY. THE SO THE NUMBER MIGHT BE TOO LOW, THERE MIGHT BE
12:01:03 23 MORE. BUT YOU DIDN'T DO ANYTHING WITH THE SWITCHES THAT YOU
12:01:05 24 HAD ACCESS TO, TO COUNT THE NUMBER OF COMMANDS SUPPORTED ON THE
12:01:08 25 SWITCH; RIGHT?

12:01:09 1 A. NOW THIS PART WAS FOCUSED ON THE MANUAL. AND THE REASON
12:01:13 2 WHY I DID THAT WAS TO EMPHASIZE WHETHER ARISTA WAS TEACHING TO
12:01:17 3 ITS CUSTOMERS WHAT IT THOUGHT WERE THE IMPORTANT COMMANDS
12:01:19 4 CONSISTENT WITH THE OTHER TESTIMONY I HAD SEEN ABOUT COPYING
12:01:23 5 THE CLI.

12:01:23 6 Q. BUT JUST TO BE CLEAR, YOU DID HAVE ACCESS TO THE ARISTA
12:01:26 7 SWITCH; RIGHT?

12:01:27 8 A. I DID.

12:01:28 9 Q. AND YOU HAD -- IT WAS AVAILABLE IN OUR OFFICE?

12:01:30 10 A. IT WAS.

12:01:31 11 Q. YOU CAME AND TESTED IT A NUMBER OF TIMES AS YOU SAID LAST
12:01:34 12 TIME?

12:01:34 13 A. YES, SIR.

12:01:35 14 Q. BUT YOU NEVER USED IT TO DETERMINE HOW MANY COMMANDS IN
12:01:38 15 TOTAL IT SUPPORTED, DO I HAVE THAT RIGHT?

12:01:40 16 A. THAT'S PARTLY CORRECT. I DIDN'T NEED TO BECAUSE THE USER
12:01:45 17 MANUAL IS DESCRIBED AS THE AUTHORITATIVE SOURCE, AND IT LISTS
12:01:50 18 THOSE COMMANDS.

12:01:50 19 Q. NOW YOU HAVE ON THE VERY BOTTOM OF THAT EOS COLUMN, 1352.
12:01:55 20 AGAIN, THOSE ARE COMMANDS COUNTED FROM THE MANUAL; RIGHT?

12:01:58 21 A. YES.

12:01:58 22 Q. AND YOU HAD ACCESS TO MR. SWEENEY'S TESTIMONY IN PREPARING
12:02:04 23 YOUR REPORT; RIGHT?

12:02:05 24 A. I DID.

12:02:05 25 Q. AND AS A MATTER OF FACT, YOUR REPORT IS CHALK FULL OF

12:02:09 1 QUOTES FROM PEOPLE AT ARISTA; RIGHT?

12:02:11 2 A. IT IS.

12:02:12 3 Q. BUT MR. SWEENEY, WHO IS THE HEAD OF SOFTWARE ENGINEERING
12:02:18 4 AT ARISTA, HE ESTIMATES THAT THERE ARE 10 TO 15,000 COMMANDS?

12:02:24 5 MR. NELSON: OBJECTION, YOUR HONOR.

12:02:25 6 MR. VAN NEST: IN EOS, RIGHT?

12:02:26 7 MR. NELSON: THOSE FACTS ARE NOT IN EVIDENCE. I
12:02:28 8 DIDN'T BRING MR. SWEENEY.

12:02:30 9 MR. VAN NEST: THIS IS FROM THE DEPOSITION TRANSCRIPT
12:02:31 10 THAT HE REVIEWED, YOUR HONOR, AS PART OF HIS REPORT.

12:02:35 11 THE COURT: WELL, YOU CAN SHOW IT TO HIM.

12:02:36 12 MR. VAN NEST: I WILL.

12:02:39 13 COULD I HAVE THE SLIDE UP WITH MR. SWEENEY'S TESTIMONY.
12:02:43 14 BY MR. VAN NEST:

12:02:44 15 Q. NOW YOU REMEMBER THAT YOU HAD ACCESS TO ALL THESE
12:02:46 16 DEPOSITIONS; RIGHT?

12:02:48 17 A. YES, SIR.

12:02:49 18 Q. AND YOU REVIEWED THEM?

12:02:50 19 A. YES.

12:02:51 20 Q. AND YOU FILLED YOUR REPORT WITH THEM?

12:02:53 21 A. YES.

12:02:53 22 Q. BUT THIS IS ONE THAT DIDN'T MAKE YOUR REPORT; RIGHT?

12:02:58 23 A. I WOULD HAVE TO GO BACK AND SEE. CERTAINLY I'M AWARE THAT
12:03:01 24 HE HAD MADE THAT STATEMENT.

12:03:04 25 Q. AND HIS STATEMENT WAS THAT WE COUNTED RECENTLY AND THERE

12:03:08 1 ARE BETWEEN 10 AND 15,000 COMMANDS IN EOS; RIGHT?

12:03:12 2 A. YES, AND I CERTAINLY BELIEVE THAT'S WHAT HE THINKS AND I

12:03:15 3 THINK WHEN YOU COUNT DIFFERENT PARAMETER OPTIONS, THAT YOU CAN

12:03:19 4 ADD TO THE END OF A COMMAND OR THE IDEA OF ADDING THE WORD "NO"

12:03:23 5 TO THE BEGINNING OF A COMMAND, HE'S DOUBLE-COUNTED THOSE AND

12:03:28 6 POTENTIALLY TRIPLE-COUNTED THOSE.

12:03:30 7 SO I THINK WHEN YOU LOOK AT THE USER MANUAL AS THE SET OF

12:03:36 8 COMMANDS THAT ARE DESCRIBED AS AVAILABLE, MY NUMBERS FROM THE

12:03:40 9 MANUAL ARE THE MOST ACCURATE NUMBERS.

12:03:43 10 Q. SO LET'S GO BACK UP TO THE CHART THAT WE HAD UP BEFORE.

12:03:46 11 SO IF THE JURY WERE TO CONCLUDE, BASED ON DR. BLACK'S TESTIMONY

12:03:50 12 OR ANY OTHER EVIDENCE, THAT THERE ARE 10,000 COMMANDS IN EOS,

12:03:55 13 YOUR PERCENTAGE NUMBER ON THE RIGHT GOES WAY DOWN FROM

12:03:58 14 37 PERCENT; RIGHT?

12:03:59 15 A. JUST DOING THE MATH, THAT WOULD BE CORRECT.

12:04:03 16 Q. RIGHT. JUST DOING THE MATH, THAT NUMBER WOULD BE DOWN

12:04:06 17 AROUND THREE PERCENT, 4 PERCENT; RIGHT, DR. ALMEROTH?

12:04:10 18 A. IF THE JURY WERE TO BELIEVE THAT THERE WEREN'T 1352

12:04:14 19 COMMANDS THAT THE MANUAL DESCRIBES, THEN THAT NUMBER WOULD GO

12:04:18 20 DOWN.

12:04:18 21 Q. AND IT WOULD GO DOWN TO ABOUT 3 PERCENT; RIGHT?

12:04:21 22 A. WELL, THE ONLY EVIDENCE THAT WE REALLY HAVE IS TO WHAT THE

12:04:27 23 ACCURATE COMMANDS ARE, IS WHAT'S IN THE MANUAL.

12:04:32 24 I MEAN, IF THEY WERE TO BELIEVE THIS DEPOSITION TESTIMONY

12:04:35 25 IS TO BE ACCURATE, THEN THAT WOULD BE THE CALCULATION THAT YOU

12:04:40 1 WOULD ARRIVE AT.

12:04:41 2 MR. NELSON: I HAVE JUST ONE MORE QUESTION.

12:04:43 3 THE COURT: OF COURSE.

12:04:44 4 BY MR. VAN NEST:

12:04:44 5 Q. YOU WERE HERE LAST WEEK, DR. ALMEROOTH, WHEN DR. BLACK
12:04:47 6 TESTIFIED THAT WHEN WE TESTED THE SWITCH HE FOUND ABOUT 8,000
12:04:51 7 COMMANDS.

12:04:51 8 WERE YOU HERE FOR THAT TESTIMONY?

12:04:52 9 A. I WAS.

12:04:53 10 MR. VAN NEST: THANK YOU.

12:04:54 11 I HAVE NOTHING FURTHER, YOUR HONOR.

12:04:56 12 OR, EXCUSE ME, I DON'T NOT HAVE ANYTHING FURTHER, BUT I'M
12:04:58 13 AT A BREAK POINT.

12:04:59 14 THE COURT: YOU ARE AT A BREAK POINT. THAT'S WHAT I
12:05:02 15 THOUGHT.

12:05:02 16 OKAY. WE WILL TAKE OUR LUNCH BREAK, AND WHEN WE RETURN,
12:05:05 17 WE WILL CONTINUE WITH DR. ALMEROOTH'S CROSS-EXAMINATION.

12:05:08 18 LET'S COME BACK AT FIVE MINUTES PAST 1:00.

12:05:14 19 (RECESS FROM 12:05 P.M. UNTIL 1:05 P.M.)

01:08:00 20 (JURY IN AT 1:08 P.M.)

01:08:00 21 THE COURT: GOOD AFTERNOON, EVERYONE. PLEASE BE
01:08:17 22 SEATED.

01:08:18 23 ALL OF OUR JURORS ARE BACK, AND DR. ALMEROOTH, GOOD
01:08:21 24 AFTERNOON.

01:08:22 25 THE WITNESS: GOOD AFTERNOON, AGAIN.

01:08:23 1 THE COURT: MR. VAN NEST, WOULD YOU LIKE TO CONTINUE?

01:08:27 2 MR. VAN NEST: I WOULD, YOUR HONOR.

01:08:27 3 THE COURT: GO AHEAD, PLEASE.

01:08:30 4 MR. VAN NEST: GOOD AFTERNOON, DR. ALMEROOTH.

01:08:33 5 THE WITNESS: GOOD AFTERNOON.

01:08:35 6 MR. VAN NEST: COULD WE PUT DR. ALMEROOTH'S SLIDE 16

01:08:37 7 UP.

01:08:38 8 Q. THIS IS THE SUMMARY THAT YOU PREPARED AND SHOWED THE JURY

01:08:41 9 THIS MORNING?

01:08:41 10 A. YES, SIR.

01:08:42 11 Q. AND I JUST WANT TO CONFIRM, I HAVE IN MY NOTE THAT TO GET

01:08:49 12 THE NUMBERS FROM THE EOS MANUALS, YOU USED THE TABLE OF

01:08:53 13 CONTENTS.

01:08:53 14 A. THAT'S CORRECT. THERE'S A LIST IN THE TABLE OF CONTENTS

01:08:56 15 CALLED THE COMMAND REFERENCE.

01:08:57 16 Q. SO YOU DIDN'T ACTUALLY OPEN THE MANUAL AND GO INTO ANY

01:09:00 17 CHAPTER AND LOOK AT ANY COMMANDS, YOU USED THE TABLE OF

01:09:04 18 CONTENTS?

01:09:04 19 A. OH, I DID FOR OTHER REASONS, BUT I ALSO LOOKED AT THE

01:09:08 20 TABLE OF CONTENTS.

01:09:09 21 Q. AND THESE NUMBERS, THEY COME FROM THE TABLE OF CONTENTS,

01:09:13 22 NOT FROM INSIDE THE MANUAL?

01:09:15 23 A. THE TABLE OF CONTENTS IS IN THE MANUAL.

01:09:17 24 Q. WHAT I MEANT WAS THESE COME FROM THE TABLE OF CONTENTS,

01:09:21 25 NOT GOING THROUGH A PARTICULAR CHAPTER. THAT'S ALL I MEANT.

01:09:23 1 A. IT'S REALLY A COMBINATION OF BOTH. I THINK THE TABLE OF
01:09:29 2 CONTENTS, IN THE COMMAND REFERENCE, SUMMARIZES THE COMMANDS
01:09:31 3 THAT EXIST IN THE MANUAL.

01:09:32 4 Q. OKAY. AND IT'S THAT SUMMARY THAT I USED TO PREPARE THIS
01:09:36 5 CHART?

01:09:36 6 A. I USED THE ENTIRE MANUAL.

01:09:38 7 Q. BUT THE NUMBERS, THEY COME FROM THE SUMMARY?

01:09:40 8 A. I'M SURE THEY ARE CONSISTENT WITH THE SUMMARY.

01:09:44 9 Q. OKAY. FAIR ENOUGH.

01:09:46 10 NOW YOU MENTIONED ON YOUR DIRECT TESTIMONY THAT YOU HAD
01:09:49 11 BEEN HERE WHEN MR. VENKATRAMAN WAS HERE YESTERDAY FROM HP.

01:09:53 12 A. YES, SIR.

01:09:55 13 Q. AND HE'S THE ONE THAT SAID THAT THE INDUSTRY HAS ADOPTED A
01:09:57 14 COMMON SET OF COMMANDS THAT EVERYONE USES; DID YOU HEAR THAT
01:10:00 15 TESTIMONY?

01:10:00 16 A. IT MIGHT BE PARAPHRASING IT, AND ULTIMATELY WHAT WE HE
01:10:07 17 SAID IS, IT'S MORE ABOUT THE FUNCTIONALITY AND LESS ABOUT THE
01:10:10 18 COMMANDS. THEN HE GAVE THE SPECIFIC EXAMPLES WITH THE WRITE
01:10:13 19 AND THE SAVE, WHERE THE SYNTAX IN THE WORDS THAT WERE USED WERE
01:10:16 20 DIFFERENT ACROSS THE INDUSTRY.

01:10:17 21 Q. BUT YOU DID HEAR HIM SAY THAT, OVER TIME, THE INDUSTRY HAS
01:10:20 22 ADOPTED A COMMON SET OF COMMANDS THAT EVERYONE USES, DIDN'T
01:10:23 23 YOU?

01:10:24 24 A. I DON'T KNOW IF YOU ARE PARAPHRASING IT CORRECTLY,
01:10:26 25 CERTAINLY WE CAN PUT UP THE TRIAL TESTIMONY AND SEE IT.

01:10:29 1 Q. AND THEN HE PUT UP A MANUAL, WE LOOKED AT ONE OF THE HP
01:10:34 2 MANUALS YESTERDAY WHILE HE WAS HERE, DIDN'T WE?

01:10:36 3 A. I BELIEVE THAT'S CORRECT.

01:10:37 4 MR. VAN NEST: COULD WE HAVE TX 6380 ON THE SCREEN.
01:10:41 5 NOW THIS WAS A NETWORKING MANUAL. THIS IS ACTUALLY AN HP
01:10:47 6 MANUAL THAT'S IN USE TODAY.

01:10:49 7 THE WITNESS: DO YOU --

01:10:50 8 Q. I'M SORRY, I JUST HAVE IT THE SCREEN, I DIDN'T BRING THE
01:10:55 9 NOTEBOOK, I'M SORRY, WE ARE RUNNING OUT OF PAPER AROUND HERE.

01:10:58 10 SO THIS IS ACTUALLY A CURRENT HP MANUAL; RIGHT?

01:11:01 11 A. I DON'T KNOW. I'VE REALLY JUST GOT THE COVER PAGE.

01:11:04 12 Q. LET'S GO BACK A COUPLE OF PAGES AND GET THE DATE. I
01:11:08 13 BELIEVE IT'S 2015. SO FAIRLY RECENT, RIGHT? LAST YEAR?

01:11:13 14 A. LAST YEAR IS WHEN THE COPYRIGHT NOTICE IS.

01:11:18 15 Q. AND THEN MR. PAK TOOK MR. VENKATRAMAN TO ONE OF THE PAGES
01:11:23 16 AND THEY LOOKED AT SOME OF THE COMMANDS THERE; DO YOU REMEMBER
01:11:25 17 THAT?

01:11:26 18 A. I DO.

01:11:27 19 Q. LET'S GO TO THAT PAGE TOO.

01:11:30 20 AND COULD WE BLOW UP THE BOTTOM TWO-THIRDS OF THE PAGE,
01:11:35 21 PLEASE.

01:11:35 22 THIS SAYS COMPARING FREQUENTLY USED COMMANDS; RIGHT?
01:11:38 23 THAT'S WHAT MR. VENKATRAMAN PRESENTED ON CROSS YESTERDAY;
01:11:41 24 RIGHT?

01:11:41 25 A. I BELIEVE. I DON'T REALLY REMEMBER ALL OF THE DETAILS.

01:11:45 1 Q. AND IT SAYS, "THE TABLE BELOW LISTS FREQUENTLY USED
01:11:48 2 COMMANDS FOR EACH OPERATING SYSTEM."

01:11:50 3 AND THEN THERE'S THREE OPERATING SYSTEMS LISTED BELOW
01:11:53 4 THERE; RIGHT?

01:11:53 5 A. YES.

01:11:54 6 Q. NOW THE PROVISION, THAT'S AN ETHERNET SWITCH THAT HP SELLS
01:11:59 7 IN COMPETITION WITH CISCO AND ARISTA; RIGHT?

01:12:04 8 A. I DON'T KNOW THAT THAT'S RIGHT. I'M PRETTY SURE THAT
01:12:07 9 THAT'S NOT.

01:12:08 10 Q. AND THEN COMWARE, THAT'S THE PRODUCT THAT MR. PAK FOCUSED
01:12:12 11 ON?

01:12:12 12 A. I DO REMEMBER THAT.

01:12:13 13 Q. AND THEN THE ONE ON THE RIGHT, THAT'S CISCO; RIGHT?

01:12:16 14 A. THAT'S WHAT IT SAYS.

01:12:17 15 Q. NOW DOES IT SEEM ODD TO YOU THAT IN AN HP MANUAL, HP WOULD
01:12:22 16 BE COMPARING ITS COMMANDS TO CISCO COMMANDS?

01:12:25 17 A. I DON'T KNOW ODD OR NOT, CERTAINLY CISCO IS RECOGNIZED AS
01:12:32 18 THE INDUSTRY LEADER. SO TO THE EXTENT THAT YOU MIGHT WANT TO
01:12:36 19 REFERENCE WHAT CISCO DOES, IT MIGHT BE POSSIBLE.

01:12:39 20 Q. IN OTHER WORDS, YOU MIGHT WANT TO SHOW HOW SIMILAR YOUR
01:12:42 21 COMMANDS ARE TO CISCO'S; RIGHT?

01:12:44 22 A. YOU MIGHT, SURE.

01:12:47 23 Q. AND THAT'S DONE A LOT IN MANUALS THROUGHOUT THE INDUSTRY,
01:12:52 24 COMPARING YOUR COMMANDS TO CISCO; RIGHT?

01:12:54 25 A. NO, I DON'T THINK SO. NOT AT THIS LEVEL. I DON'T -- I

01:12:59 1 DON'T RECALL SEEING ANYTHING LIKE THIS IN ANY OF THE MANUALS.

01:13:02 2 Q. LET'S LOOK A LITTLE MORE CLOSELY.

01:13:05 3 MR. VAN NEST: COULD WE DROP THE MIDDLE OPERATING

01:13:06 4 SYSTEM OUT, MR. DAHM, AND COMPARE THE HP PROVISION WITH THE

01:13:10 5 CISCO PRODUCT. PULL THEM TOGETHER.

01:13:18 6 Q. NOW THOSE ARE PRETTY SIMILAR; RIGHT?

01:13:21 7 A. YOU WILL HAVE TO GIVE ME A SECOND. I DON'T HAVE THE

01:13:25 8 MANUAL, SO LET ME LOOK AT THIS.

01:13:31 9 THERE ARE A FAIR NUMBER THAT ARE SIMILAR, THERE'S ALSO A

01:13:34 10 LOT OF ONE-WORD COMMANDS HERE THAT AREN'T COUNTED.

01:13:38 11 Q. SO --

01:13:39 12 A. SORRY, I'M NOT FINISHED.

01:13:42 13 IF YOU LOOK AT THE ONE-WORD COMMANDS, THEN LOOK AT THE

01:13:47 14 TWO-WORD, THE ONES THAT ARE THE SAME, MAYBE TEN LOOK TO BE

01:13:50 15 PRETTY SIMILAR.

01:13:51 16 Q. WELL, "SHOW FLASH," THAT'S THE SAME?

01:13:53 17 A. YES.

01:13:53 18 Q. "SHOW VERSION," "SHOW RUN?"

01:13:55 19 A. YES.

01:13:55 20 Q. RIGHT? THOSE ARE THE SAME.

01:13:58 21 "SHOW HISTORY?" "SHOW LOG IN?"

01:14:00 22 A. HOLD ON, HOLD ON, A LITTLE SLOWER, PLEASE. OKAY.

01:14:03 23 Q. "SHOW IP ROUTE?"

01:14:05 24 A. OKAY.

01:14:05 25 Q. NOW DO YOU THINK HP COPIED THESE FROM CISCO?

01:14:08 1 A. NO, THERE'S NO EVIDENCE THAT HP HAS. THEY HAVEN'T --
01:14:12 2 THERE'S NO TESTIMONY OR DEPOSITION OR SAYS THERE'S COPYING, FOR
01:14:17 3 EXAMPLE, LIKE THERE IS FROM ARISTA.

01:14:18 4 Q. AND YOU ARE NOT ACCUSING HP OF DOING ANYTHING WRONG;
01:14:23 5 RIGHT?

01:14:23 6 A. I WASN'T HIRED TO PROVIDE OPINIONS OR DO ANALYSIS WITH
01:14:26 7 RESPECT TO WHETHER HP WAS COPYING FROM CISCO.

01:14:29 8 Q. AND YOU THINK HP IS AN ETHICAL COMPANY?

01:14:34 9 A. GENERALLY.

01:14:36 10 Q. OKAY. SO HERE'S A VERY PUBLIC EXAMPLE OF ONE OF THE OTHER
01:14:41 11 MAJOR COMPETITORS COMPARING LINE-TO-LINE ON THE COMMANDS. AND
01:14:48 12 MOST, IF NOT ALL OF THEM, ARE IDENTICAL; ISN'T THAT RIGHT,
01:14:51 13 DR. ALMEROOTH?

01:14:51 14 A. NO, THAT'S NOT RIGHT. YOU WENT THROUGH THE EXAMPLES, WE
01:14:55 15 CAME UP WITH FIVE, THERE'S ALSO A BUNCH OF ONE-WORD COMMANDS
01:15:00 16 WHICH AREN'T AT ISSUE.

01:15:01 17 SO I THINK IT IS PRETTY SUSPECT TO TAKE THIS KIND OF
01:15:03 18 PRESENTATION, PUT THESE SIDE-BY-SIDE FOR A VERY LIMITED NUMBER
01:15:09 19 OF COMMANDS, AND DRAW ANY SIGNIFICANT CONCLUSIONS FROM IT.

01:15:12 20 Q. WELL, THOSE ARE ALL THE COMMANDS THAT WERE SHOWN IN THIS
01:15:15 21 CHART IN THE HP MANUAL, DR. ALMEROOTH; RIGHT?

01:15:18 22 A. AGAIN, I DON'T HAVE THE CHART, I'M JUST GOING BASED ON
01:15:25 23 WHAT'S HERE ON THE SCREEN, AND I THINK YOU AND I WALKED
01:15:27 24 THROUGH 5 MULTIWORD COMMANDS.

01:15:28 25 MR. VAN NEST: I HAVE NOTHING FURTHER, YOUR HONOR.

01:15:30 1 THE COURT: THANK YOU.

01:15:30 2 MR. NELSON, REDIRECT?

01:15:32 3 MR. NELSON: SURE. THANK YOU, YOUR HONOR.

01:15:37 4 **REDIRECT EXAMINATION**

01:15:38 5 BY MR. NELSON:

01:15:41 6 Q. I JUST HAVE A FEW QUESTIONS FOR YOU, DR. ALMEROOTH.

01:15:45 7 CAN WE PUT UP SLIDE 1, I THINK IT WAS FROM MR. VAN NEST'S
01:15:49 8 PRESENTATION. I JUST HAVE A FEW QUESTIONS ABOUT THIS ONE.

01:16:09 9 SO COUNSEL ASKED YOU A BUNCH OF QUESTIONS SAYING THESE ARE
01:16:14 10 THE NUMBER OF COMMANDS THAT ARE CURRENTLY IN PRODUCTS?

01:16:17 11 A. YES.

01:16:17 12 Q. OKAY. THAT'S NOT RIGHT, IS IT?

01:16:19 13 A. NO, NO.

01:16:21 14 Q. SO CAN YOU EXPLAIN WHAT THIS ACTUALLY IS?

01:16:23 15 A. WHAT THIS IS, IS REMEMBER, THIS IS A COLLECTION OF ALL OF
01:16:27 16 THE MANUALS THAT THEY FOUND, AND THEY ANALYZED AND SORT OF PUT
01:16:31 17 IT ALL INTO A BIG BUCKET AND THEN LOOKED FOR THE EXISTENCE OF
01:16:36 18 ANY OF THESE COMMANDS OVER THE ENTIRE DURATION OF MANUALS THAT
01:16:40 19 THEY HAD.

01:16:40 20 Q. OKAY. SO THEN, LIKE HP FOR EXAMPLE, RIGHT, DOES THIS TELL
01:16:46 21 YOU THAT HP IS CURRENTLY USING 129 OUT OF THE 506 COMMANDS?

01:16:51 22 A. NO. AT SOME POINT IT MIGHT HAVE USED ONE OF THE COMMANDS,
01:16:55 23 BUT CERTAINLY NOT CURRENTLY.

01:16:56 24 Q. NOW, CAN WE GO TO THAT CHART WE WERE JUST LOOKING AT, I
01:17:08 25 THINK IT WAS SLIDE 17 FROM THE PRESENTATION --

01:17:13 1 MR. VAN NEST: SLIDE 16.

01:17:14 2 MR. NELSON: 16, THANK YOU, MR. VAN NEST.

01:17:17 3 Q. SLIDE 16, THE NUMBERS OVER TIME.

01:17:20 4 A. OH, RIGHT, RIGHT.

01:17:21 5 Q. SO SLIDE 16. THERE WE GO.

01:17:35 6 ALL RIGHT. SO YOU WERE ASKED SOME QUESTIONS ABOUT THE
01:17:40 7 NUMBER IN THE -- I GUESS IT'S NOT THE MIDDLE, IT'S THE THIRD
01:17:45 8 COLUMN.

01:17:46 9 AND THOSE WERE THE COMMANDS IN THE USER MANUAL; IS THAT
01:17:46 10 RIGHT?

01:17:54 11 A. YES.

01:17:54 12 Q. SO WHAT'S THE USER MANUAL FOR?

01:17:56 13 A. IT'S TO INSTRUCT THE USERS ON WHAT THE COMMANDS ARE. IT
01:18:00 14 TELLS THE USERS OF THE SWITCHES WHAT COMMANDS THEY HAVE
01:18:03 15 AVAILABLE TO THEM.

01:18:04 16 Q. SO DOES IT MAKE ANY SENSE TO HAVE A BUNCH OF IMPORTANT
01:18:08 17 COMMANDS THAT YOU DON'T TELL THE USER ABOUT?

01:18:10 18 A. NO, NOT IMPORTANT ONES.

01:18:11 19 Q. WHY DO YOU SAY THAT?

01:18:12 20 A. WELL, I MEAN, THAT'S WHAT THE MANUAL IS FOR IS TO PUT THE
01:18:15 21 IMPORTANT COMMANDS. AND IF THERE'S SOMETHING THAT THEY LEAVE
01:18:19 22 OUT OF THE USER MANUAL, THAT'S PRETTY MUCH THE THRESHOLD FOR
01:18:23 23 WHY IT WOULDN'T BE IMPORTANT.

01:18:24 24 MR. NELSON: THANK YOU, SIR.

01:18:25 25 I DON'T HAVE ANY FURTHER QUESTIONS.

01:18:26 1 THE COURT: MR. VAN NEST, ANYTHING ELSE FOR
01:18:28 2 DR. ALMEROTH?

01:18:29 3 MR. VAN NEST: I JUST HAVE ONE.

01:18:31 4 **RECROSS-EXAMINATION**

01:18:31 5 BY MR. VAN NEST:

01:18:32 6 Q. DR. ALMEROTH, THAT 506 COMMAND NUMBER, THAT'S NOT FROM ONE
01:18:35 7 MANUAL OR ONE SYSTEM, IS IT?

01:18:37 8 A. NO.

01:18:38 9 Q. IT'S ADDING UP FOUR DIFFERENT CISCO OPERATING SYSTEMS?

01:18:42 10 A. IT'S FOUR DIFFERENT OPERATING SYSTEMS, BUT A MAJORITY OF
01:18:45 11 THE COMMANDS ARE IN EACH ONE.

01:18:46 12 MR. VAN NEST: THANK YOU. I HAVE NOTHING FURTHER,
01:18:48 13 YOUR HONOR.

01:18:48 14 THE COURT: THANK YOU, MR. NELSON.

01:18:50 15 MR. NELSON: NOTHING FURTHER.

01:18:51 16 HE MAY BE EXCUSED, YOUR HONOR.

01:18:53 17 THE COURT: DR. ALMEROTH, THANK YOU FOR YOUR
01:18:55 18 TESTIMONY. YOU MAY STEP DOWN.

01:19:01 19
01:19:03 20 MR. PAK: YOUR HONOR, WE ARE GOING TO CALL
01:19:06 21 DR. JUDITH CHEVALIER BACK TO THE STAND.

01:19:08 22 THE COURT: DR. CHEVALIER, IF YOU WOULD COME FORWARD
01:19:10 23 TO THE WITNESS STAND PLEASE AND STAND TO BE SWORN.

01:19:13 24 **(PLAINTIFF'S WITNESS, DR. JUDITH CHEVALIER, WAS SWORN.)**

01:19:13 25 THE WITNESS: YES.

01:19:23 1 MR. PAK: YOUR HONOR, MAY I APPROACH THE WITNESS?

01:19:26 2 THE COURT: YES.

01:19:29 3 **DIRECT EXAMINATION**

01:19:30 4 BY MR. PAK:

01:19:40 5 Q. WELCOME BACK, DR. CHEVALIER.

01:19:42 6 A. THANK YOU.

01:19:43 7 Q. I THINK THIS IS YOUR THIRD TIME TAKING THE STAND, I
01:19:46 8 BELIEVE?

01:19:46 9 A. YES.

01:19:46 10 Q. OKAY. SO LET'S SEE IF WE CAN MAKE THIS VERY EFFICIENT
01:19:49 11 TODAY.

01:19:50 12 WERE YOU IN THE COURTROOM WHEN MS. ELSTEN TESTIFIED, I
01:19:56 13 BELIEVE YESTERDAY OR WEDNESDAY?

01:19:57 14 A. THE DAY BEFORE, YES.

01:19:59 15 Q. AND WERE YOU ABLE TO LISTEN TO HER TESTIMONY AND CONSIDER
01:20:03 16 HER TESTIMONY IN LIGHT OF THE OPINIONS THAT SHE OFFERED?

01:20:06 17 A. YES.

01:20:06 18 Q. SO AT THIS TIME, I WOULD LIKE TO PUT ON THE SCREEN HER
01:20:08 19 TRIAL TESTIMONY, THIS IS MS. ELSTEN'S TRIAL TESTIMONY, AT
01:20:13 20 PAGE 2398, LINE 23, TO PAGE 2399, LINE 18.

01:20:21 21 MR. PAK: AND IF I COULD HAVE, MR. FISHER, FOCUS ON
01:20:29 22 THESE ONE EXAMPLE OF A REASON WHY, THEN HIGHLIGHT THAT
01:20:38 23 PARAGRAPH. AND THEN IF YOU COULD HIGHLIGHT THE NEXT THREE
01:20:43 24 PARAGRAPHS.

01:20:46 25 Q. OKAY. SO DR. CHEVALIER, I WOULD LIKE TO HAVE YOU ASSESS

01:20:52 1 THE ECONOMIC IMPLICATIONS OF WHAT MS. ELSTEN, ON BEHALF OF
01:20:56 2 ARISTA, STATED AT TRIAL WITH RESPECT TO MARKET DYNAMICS AND
01:21:03 3 CUSTOMER INTERACTIONS, AND SPECIFICALLY THE IMPORTANCE OF THE
01:21:07 4 CLI USER INTERFACE.

01:21:09 5 A. SURE.

01:21:10 6 SO THIS WAS IN HER FAIR USE OPINION, BUT WHAT SHE SAYS
01:21:13 7 HERE IS FOR CISCO TO WIN THAT CUSTOMER BACK, THEY HAVE TO
01:21:17 8 PERSUADE THE CUSTOMER TO REVERSE THAT RETRAINING.

01:21:20 9 AND THEN AGAIN, HAVING THAT CUSTOMER STILL BE USING A
01:21:23 10 SIMILAR INTERFACE TO CISCO'S IS GOING TO MAKE IT EASIER FOR
01:21:26 11 CISCO TO MOVE WHEN -- WIN THAT CUSTOMER BACK.

01:21:33 12 SO I THINK IT'S VERY CONSISTENT IN WHAT I SAID IN MY PRIOR
01:21:37 13 TESTIMONY, WHICH IS THAT THE COST OF TRAINING IS AN IMPORTANT
01:21:39 14 ISSUE FOR THE CUSTOMERS IN THIS MARKET, AND WHAT MS. ELSTEN IS
01:21:45 15 SAYING HERE IS THAT THE COST OF TRAINING IS IMPORTANT FOR THE
01:21:47 16 CUSTOMERS.

01:21:49 17 AND FURTHERMORE, THAT IF A CUSTOMER HAS TO BE TRAINED TO A
01:21:54 18 VENDOR CLI, THAT WILL BE A BARRIER TO THAT CUSTOMER ADOPTING
01:22:00 19 THAT VENDOR'S PRODUCT.

01:22:01 20 Q. AND WHEN MS. ELSTEN WAS GIVING THIS TESTIMONY, WAS SHE
01:22:05 21 EXCLUDING CLOUD COMPUTING CUSTOMERS?

01:22:06 22 A. SHE DEFINITELY DIDN'T SAY THAT, NO.

01:22:10 23 Q. WAS SHE EXCLUDING LOW LATENCY CUSTOMERS?

01:22:12 24 A. NO.

01:22:12 25 Q. AND WAS SHE EXCLUDING AUTOMATION CUSTOMERS WHEN SHE GAVE

01:22:16 1
01:22:17 2
01:22:18 3
01:22:20 4
01:22:24 5
01:22:28 6
01:22:33 7
01:22:35 8
01:22:35 9
01:22:39 10
01:22:42 11
01:22:43 12
01:22:44 13
01:22:44 14
01:22:47 15
01:22:50 16
01:22:53 17
01:22:57 18
01:23:00 19
01:23:05 20
01:23:06 21
01:23:07 22
01:23:09 23
01:23:13 24
01:23:16 25

THIS TESTIMONY?

A. NO, I DON'T THINK SO.

Q. LET'S SEE EXACTLY WHAT SHE SAYS.

SHE SAYS, "YOU ARE A CISCO AND YOU LOSE TO SOMEONE. IF
YOU LOSE A CUSTOMER TO JUNIPER, THE CUSTOMER IS GOING TO BE
RETRAINED ON THE JUNIPER CLI THAT IS UNLIKE CISCO'S."

IS THAT WHAT SHE'S STATING HERE?

A. YES.

Q. THEN SHE GOES ON TO SAY, "SO FOR CISCO TO WIN THAT
CUSTOMER BACK, THEY WOULD HAVE TO PERSUADE THAT CUSTOMER TO
REVERSE THAT RETRAINING."

DO YOU SEE THAT?

A. YES.

Q. THEN SHE GOES ON TO SAY, "ON THE OTHER HAND, IF THERE'S AN
INDUSTRY STANDARD THAT IS DEFINED BY CISCO, IF THEY LOSE A
CUSTOMER FOR ANOTHER REASON LIKE RELIABILITY OR SPEED OR
WHATEVER, THEY WANT TO WIN THAT CUSTOMER BACK. HAVING THAT
CUSTOMER STILL BE USING A SIMILAR INTERFACE TO CISCO'S IS GOING
TO MAKE IT EASIER FOR CISCO TO MOVE WHEN THAT -- WIN THAT
CUSTOMER BACK."

DO YOU SEE THAT TESTIMONY?

A. YES, I DO.

Q. SO AGAIN, I KNOW SHE GAVE THIS OPINION IN FAIR USE, BUT DO
THESE ECONOMIC PRINCIPLES APPLY WHEN YOU ARE THINKING ABOUT
COPYRIGHT DAMAGES OVERALL?

01:23:17 1 A. YES. SO THERE'S NO REASON THAT THESE ECONOMIC FRAMEWORK
01:23:20 2 SHOULD APPLY ONLY TO FAIR USE.

01:23:22 3 SO SHE'S STATING AN OPINION ABOUT THE COSTS OF SWITCHING
01:23:27 4 BETWEEN SWITCH VENDORS AS A FUNCTION OF CLI. AND THAT WOULD
01:23:31 5 APPLY TO A LOST PROFITS ANALYSIS, TO DISGORGEMENT, EVERYWHERE.

01:23:35 6 Q. OKAY. SO I WANTED TO FOCUS NOW ON YOUR LOST PROFITS
01:23:45 7 OPINIONS AND SPECIFICALLY THE MARKET SHARE ANALYSIS THAT YOU
01:23:47 8 DID.

01:23:48 9 A. OKAY.

01:23:48 10 MR. VAN NEST: AND IF I COULD HAVE SLIDE 2 FROM
01:23:52 11 DR. CHEVALIER'S PRESENTATION.

01:23:57 12 Q. I BELIEVE YOU PRESENTED THIS THE LAST TIME YOU WERE UP,
01:24:02 13 THIS WAS THE MARKET SHARE ANALYSIS THAT YOU DID?

01:24:04 14 A. YES.

01:24:04 15 Q. AND I RECALL THAT MS. ELSTEN, IN CRITICIZING YOUR LOST
01:24:08 16 PROFITS OPINION, SAID WELL, DR. CHEVALIER DID NOT TAKE INTO
01:24:12 17 ACCOUNT THE SUM OF THE LOST SALES WOULD HAVE GONE TO OTHER
01:24:16 18 VENDORS OTHER THAN CISCO; DO YOU RECALL THAT TESTIMONY?

01:24:19 19 A. ROUGHLY, YES.

01:24:20 20 Q. AND DO YOU THINK THAT'S A FAIR CRITIQUE OF YOUR MARKET
01:24:24 21 SHARE ANALYSIS?

01:24:25 22 A. WELL, NO. SO I THINK SHE SAID THAT, YOU KNOW, SOME
01:24:31 23 CUSTOMERS WOULD BE LOOKING FOR A SECOND SOURCE.

01:24:33 24 AND YOU KNOW, ONE OF THE REASONS WHY I'M ALLOCATING
01:24:37 25 ARISTA'S MARKET SHARE TO OTHER VENDORS, NOT JUST CISCO, BUT

01:24:41 1 JUNIPER, DELL AND BROCADE IS TO TAKE INTO THE ACCOUNT THAT SOME
01:24:46 2 CUSTOMERS IF THEY WERE NOT TO BUY FROM ARISTA, WOULDN'T GO TO
01:24:50 3 CISCO, THEY WOULD GO TO SOME OF THESE OTHER VENDORS.

01:24:53 4 SO I HAD ALLOCATED THEM PROPORTIONALLY TO THEIR MARKET
01:24:56 5 SHARE, EVEN THOUGH CISCO AND ARISTA ARE QUITE CLOSE
01:25:00 6 COMPETITORS, BUT TO TAKE INTO ACCOUNT THEIR CRITICISM
01:25:03 7 SPECIFICALLY THAT SHE RAISED THAT SOME CUSTOMERS WOULD WANT TO
01:25:07 8 GO TO A SECOND VENDOR.

01:25:08 9 Q. AND WHAT ARE THESE BLUE ARROWS AGAIN THAT YOU SEE ON THE
01:25:12 10 LEFT-HAND SIDE, HOW DOES THAT RELATE TO YOUR OPINION IN THIS
01:25:15 11 REGARD?

01:25:16 12 A. OKAY. SO YOU WILL REMEMBER IN LOST PROFITS, WE ARE TAKING
01:25:19 13 PART OF ARISTA'S SALES OUT OF THE MARKET BECAUSE THOSE ARE THE
01:25:22 14 SALES THAT ARISTA, IN MY OPINION, WOULD NOT HAVE MADE BUT FOR
01:25:26 15 INFRINGEMENT.

01:25:27 16 AND THOSE SALES ARE BEING ALLOCATED PROPORTIONALLY, THAT'S
01:25:32 17 WHAT THE ARROWS ARE SHOWING YOU, TO THE OTHER SWITCH VENDORS IN
01:25:37 18 THE MARKET.

01:25:37 19 Q. SO JUNIPER, DELL, BROCADE, OTHER VENDORS WOULD STILL GET
01:25:42 20 THEIR SHARE OF WHATEVER SALES ARISTA WOULD LOSE BY NOT HAVING
01:25:46 21 AN INFRINGING CLI; IS THAT RIGHT?

01:25:47 22 A. EXACTLY. SO CISCO ONLY GETS A SHARE OF IT.

01:25:50 23 Q. AND THAT'S REFLECTED IN YOUR MARKET SHARE ANALYSIS?

01:25:53 24 A. CORRECT.

01:25:53 25 Q. I THINK ONE OTHER THING SHE SAID IS LOOKING AT THAT BLUE

01:25:55 1 SLIVER RIGHT IN THE MIDDLE THERE, THAT'S THE 20 PERCENT
01:25:58 2 ADJUSTMENT THAT YOU MADE, CORRECT?

01:25:59 3 A. CORRECT.

01:25:59 4 Q. AND JUST TO MAKE IT CLEAR, YOU WERE SAYING, I'M NOT GOING
01:26:03 5 TO TAKE 20 PERCENT OF ARISTA'S SALES AND INCLUDE IT IN MY LOST
01:26:09 6 PROFITS NUMBER, CORRECT?

01:26:09 7 A. EXACTLY. SO THAT 20 PERCENT IS THE 20 PERCENT THAT I HAVE
01:26:14 8 DETERMINED WOULD NOT BE, OR AT LEAST IS AN ESTIMATE OF WHAT
01:26:18 9 ARISTA WOULD NOT LOSE IF IT WERE TO NOT BE INFRINGING CISCO'S
01:26:23 10 CLI.

01:26:23 11 Q. AND I BELIEVE THAT ONE -- YOU LOOKED AT A LOT OF THINGS
01:26:26 12 BUT ONE OF THE BASIS FOR THAT OPINION WAS MR. DUDA, THE CTO OF
01:26:30 13 ARISTA, TESTIFIED THAT ROUGHLY 20 PERCENT OF HIS CUSTOMERS USE
01:26:35 14 THE LINUX APPROACH WHICH DOESN'T USE THE INFRINGING CLI; DO YOU
01:26:39 15 RECALL THAT?

01:26:39 16 A. YES, CORRECT.

01:26:40 17 Q. BUT JUST TO BE CLEAR ON THE RECORD, IF MR. DUDA IS WRONG
01:26:44 18 ABOUT THAT, AND LET'S SAY THERE'S ACTUALLY A SMALLER NUMBER OF
01:26:48 19 PEOPLE THAT USE LINUX, COMPARED TO THE INFRINGING CLI, WHAT
01:26:53 20 WOULD HAPPEN IN THAT SCENARIO?

01:26:55 21 A. ALL RIGHT. SO THIS IS ACTUALLY SOME TESTIMONY THAT, YOU
01:26:59 22 KNOW, THAT'S AN OVERESTIMATE OF THE SHARE OF CUSTOMERS WHO
01:27:02 23 TRULY USE A PURE LINUX APPROACH.

01:27:04 24 AND IF IT'S AN OVERESTIMATE, THEN I'VE JUST ALLOCATED MORE
01:27:08 25 SALES TO ARISTA, AND THAT REDUCES THE LOST PROFITS ALLOCATION.

01:27:13 1 Q. SO IN OTHER WORDS, IF THAT BLUE SLIVER GETS SMALLER
01:27:17 2 BECAUSE THE NUMBER OF PEOPLE WHO USE LINUX IS ACTUALLY SMALLER
01:27:20 3 THAN 20 PERCENT, THAT WILL ONLY BENEFIT ARISTA, WOULDN'T IT?
01:27:23 4 A. YES.
01:27:24 5 Q. ONE LAST THING.
01:27:26 6 I THINK YOU WERE HERE FOR MY EXAMINATION OF MS. ELSTEN
01:27:29 7 THIS MORNING?
01:27:29 8 A. I WAS.
01:27:30 9 Q. AND I THINK YOU SAW WHERE I WAS ABLE TO SHOW HER SOME OF
01:27:34 10 THE DOCUMENTS FROM MICROSOFT AND FACEBOOK THAT DISCUSSED THE
01:27:38 11 CISCO CLI COMMANDS; DO YOU RECALL THAT?
01:27:40 12 A. YES.
01:27:40 13 Q. NOW I TAKE IT THAT BOTH EXPERTS LOOKED AT A LOT OF
01:27:44 14 MATERIAL?
01:27:45 15 A. WE DID, YES, ABSOLUTELY.
01:27:46 16 Q. AND I KNOW THAT BOTH OF YOU WERE VERY DILIGENT, BUT IT'S
01:27:49 17 HARD TO DEVELOP A COMPLETE RECORD OF ALL THE TRANSACTIONS, ALL
01:27:53 18 THE THOUSANDS OF CUSTOMERS THAT INVOLVE BOTH COMPANIES IN THIS
01:27:57 19 CASE, CORRECT?
01:27:57 20 A. CORRECT, YES.
01:27:58 21 Q. AND SO CAN YOU EXPLAIN TO THE JURY, AGAIN, WHY YOU WERE
01:28:02 22 USING THIS MARKET SHARE ANALYSIS RATHER THAN TRYING TO HUNT
01:28:06 23 DOWN EVERY SINGLE INDIVIDUAL TRANSACTION AND INDIVIDUAL
01:28:09 24 CUSTOMER?
01:28:10 25 A. OKAY. SO YOU CAN SEE FROM, YOU KNOW, BOTH MY ANALYSIS AND

01:28:15 1 MS. ELSTEN'S THAT THERE'S A LARGE AMOUNT OF DOCUMENTS, AND EVEN
01:28:18 2 WITH THE MOUNTAINS OF DOCUMENTS WE SEE, WE REALLY DON'T SEE
01:28:21 3 THINGS, YOU KNOW, WE DON'T SEE CONVERSATIONS THAT HAPPENED, WE
01:28:26 4 DON'T -- YOU KNOW, THE RECORD REALLY ISN'T COMPLETE ABOUT WHY
01:28:29 5 CUSTOMERS MADE PARTICULAR PURCHASES.

01:28:31 6 SO THAT'S WHY, YOU KNOW, GIVEN THAT GOING
01:28:35 7 CUSTOMER-BY-CUSTOMER, WELL, I DID THAT IN REPORT AS ANOTHER WAY
01:28:38 8 OF LOOKING AT THINGS. GOING CUSTOMER-TO-CUSTOMER REALLY, YOU
01:28:42 9 KNOW, SUFFERS FROM THIS INCOMPLETENESS OF THE RECORD.

01:28:47 10 SO USING A SHARED APPROACH IS A WAY BEING LOAF BEING
01:28:51 11 LOOKING BEING AT THE TOTALITY OF SALES AND REALLY APPORTION BY
01:28:54 12 SHARE HOW MUCH WOULD GO TO CISCO, ARISTA, ET CETERA.

01:28:57 13 Q. IS THERE ANY DISPUTE AMONG THE EXPERTS HERE ABOUT WHETHER
01:29:01 14 THESE MARKET SHARE NUMBERS ARE GENERALLY CORRECT OR NOT?

01:29:05 15 A. THESE MARKET SHARES NUMBERS HERE, CERTAINLY NOT THAT I'VE
01:29:07 16 HEARD.

01:29:08 17 Q. AND THEY ARE PUBLISHED BY THIRD PARTY AGENCIES?

01:29:10 18 A. YES, THEY COME FROM THIRD PARTY TO THIRD PARTY PLACES.

01:29:13 19 Q. SO NOW WE ARE GOING TO TRANSITION TO DISGORGEMENT OF
01:29:16 20 PROFITS. SO WE ARE TALKING ABOUT LOST PROFITS AND NOW WE ARE
01:29:19 21 IN DISGORGEMENT?

01:29:20 22 A. OKAY.

01:29:20 23 Q. AND I THINK YOU EXPLAINED THIS THE LAST TIME YOU WERE UP,
01:29:23 24 BUT WHOSE BURDEN IS IT TO DISGORGE PORTIONS OF THE PROFITS NOT
01:29:27 25 ATTRIBUTE TO THE INFRINGING CLI?

01:29:29 1 A. RIGHT. SO UNDER THE LAW, ITS CISCO'S BURDEN TO JUST STATE
01:29:33 2 THE REVENUES ASSOCIATED WITH THE SALE, WITH THE INFRINGEMENT,
01:29:37 3 AND THEN IT'S ARISTA'S BURDEN TO PROVE DEDUCTIBLE COSTS AND
01:29:42 4 ALSO TO APPORTION AWAY THE PART OF THAT PROFIT THAT'S NOT DUE
01:29:49 5 TO THE INFRINGEMENT.

01:29:50 6 Q. OKAY. AND NOW, YOU ARE HERE, AND WHAT IS YOUR JOB TODAY
01:29:53 7 WITH RESPECT TO DISGORGEMENT?

01:29:55 8 A. OKAY. SO MY JOB TODAY IS TO REPLY TO AND CRITIQUE
01:30:01 9 MS. ELSTEN'S APPORTIONMENT ANALYSIS.

01:30:02 10 Q. OKAY. SO WHEN IT COMES TO DISGORGEMENT OF ARISTA'S
01:30:06 11 PROFITS, AT A HIGH LEVEL, WHAT DID MS. ELSTEN CALCULATE AS THE
01:30:10 12 DISGORGEMENT NUMBER FOR THE DAMAGES PERIOD IN QUESTION?

01:30:13 13 A. OKAY. SO HER TOTAL DISGORGEMENT DAMAGES WERE \$16 MILLION.
01:30:18 14 AND THE IMPORTANT ELEMENTS OF THAT WERE, FIRST, SHE
01:30:22 15 DEDUCTED COSTS, AND SO USED EFFECTIVELY, HER CALCULATION OF
01:30:28 16 ARISTA'S PROFIT RATE IN ORDER TO REMOVE THE COSTS.

01:30:32 17 AND THEN SHE APPORTIONED A FRACTION OF THE SALES TO THE
01:30:40 18 CLI.

01:30:41 19 Q. AND TODAY, ARE YOU -- FOR PURPOSES OF THE TRIAL, ARE YOU
01:30:47 20 CONTESTING HER COST CALCULATIONS IN PERFORMING HER PROFIT
01:30:52 21 NUMBERS?

01:30:52 22 A. NO, I'M NOT.

01:30:53 23 Q. OKAY. SO WE ARE GOING TO FOCUS ON THE OTHER PART, WHICH
01:30:56 24 IS, SO LET'S AGREE FOR NOW THAT THE PROFIT NUMBERS ARE CORRECT?

01:30:59 25 A. YES, LET'S DO THAT. OKAY.

01:31:02 1 Q. SO WHAT WE ARE TRYING TO DO NOW IS TO ASSESS WHETHER SHE
01:31:07 2 WAS CORRECT IN CALCULATING THE APPORTIONMENT OF VALUE GENERATED
01:31:10 3 BY COMPONENTS OTHER THAN THE CISCO CLI?

01:31:13 4 A. OKAY, YES.

01:31:14 5 Q. SO WITH THAT, LET'S GO TO MS. ELSTEN'S SLIDE 53. AND
01:31:30 6 AGAIN, THIS IS NOT YOUR SLIDE, THIS IS MS. ELSTEN'S SLIDE.
01:31:35 7 CORRECT?

01:31:35 8 A. CORRECT.

01:31:35 9 Q. COULD YOU TELL US, BRIEFLY, WHAT WAS MS. ELSTEN PORTRAYING
01:31:39 10 WITH THIS PIE CHART THAT'S ROUGHLY DIVIDED IN HALF?

01:31:43 11 A. OKAY. SO HER APPORTIONMENT ANALYSIS, ONCE WE'VE GOTTEN TO
01:31:46 12 THE PROFITS, WILL PROCEED IN A COUPLE OF STEPS.

01:31:48 13 BUT THE FIRST STEP IS THAT SHE'S GOING TO USE A DIFFERENT
01:31:51 14 APPORTIONMENT FOR WHAT SHE CALLS THE "HIGHLY AUTOMATED"
01:31:55 15 CUSTOMERS VERSUS ALL OTHER CUSTOMERS.

01:31:58 16 SO SHE USES A DIFFERENT SHARE ATTRIBUTABLE TO THE
01:32:01 17 INFRINGEMENT FOR BOTH GROUPS.

01:32:03 18 Q. AND DO YOU REMEMBER WHAT, GENERALLY, WAS PERCENTAGE SHE
01:32:06 19 USED FOR ALL THE OTHER CUSTOMERS?

01:32:08 20 A. SO FOR THE ALL OTHER CUSTOMERS, IT COMES TO ABOUT 8
01:32:12 21 PERCENT.

01:32:12 22 Q. AND WHAT NUMBER DID SHE USE FOR ALL THE CUSTOMERS THAT ARE
01:32:15 23 HIGHLY AUTOMATED CUSTOMERS?

01:32:16 24 A. SHE USES 0.06 PERCENT.

01:32:21 25 Q. THAT'S A BIG DIFFERENCE?

01:32:22 1 A. SORRY, 0.6 PERCENT. MY MISTAKE.

01:32:25 2 Q. 0.6 PERCENT. SO IT'S ABOUT 13 TIMES DIFFERENCE?

01:32:32 3 A. CORRECT.

01:32:32 4 Q. SO DO YOU AGREE THAT AUTOMATED CUSTOMERS SHOULD BE GIVEN

01:32:38 5 SUCH A LOW VALUE IN TERMS OF THE INFRINGING CLI CONTRIBUTION?

01:32:43 6 A. NO, I DON'T. I DON'T AGREE.

01:32:44 7 Q. AND ULTIMATELY, WE ARE GOING TO GET TO THIS, BUT

01:32:48 8 ULTIMATELY, WHAT IS YOUR CONCLUSION AS TO WHETHER DIFFERENT

01:32:51 9 APPORTIONMENT RATES SHOULD BE APPLIED TO THESE TWO GROUPS OR

01:32:54 10 WHETHER THE SAME RATE SHOULD APPLY?

01:32:55 11 A. SO IT'S MY OPINION THAT THE CUSTOMERS CAN BE TREATED

01:32:59 12 TOGETHER AND THE SAME RATE SHOULD APPLY.

01:33:02 13 Q. AND HAVE YOU SEEN EVIDENCE IN THIS CASE THAT EVEN THE

01:33:05 14 HIGHLY AUTOMATED CUSTOMERS TO THE LEFT USED THIS INFRINGING CLI

01:33:09 15 AND ACTUALLY CARE ABOUT THE INFRINGING CLI?

01:33:12 16 A. YES. I THINK YOU WENT OVER SOME DOCUMENTS, FOR EXAMPLE

01:33:15 17 THIS MORNING, I HAVE SEEN EVIDENCE THAT DEFINITELY THE HIGHLY

01:33:18 18 AUTOMATED CUSTOMERS USE THE CLI AND IT IS IMPORTANT TO THEM.

01:33:22 19 Q. AND DO YOU RECALL THAT ONE OF THE AUTOMATION CUSTOMERS

01:33:25 20 THAT MS. ELSTEN TALKED ABOUT WAS BLOOMBERG, THAT'S A FINANCIAL

01:33:29 21 INSTITUTION?

01:33:29 22 A. YES, THAT'S ONE OF THE AUTOMATED CUSTOMERS. THE LOGO

01:33:33 23 DOESN'T APPEAR HERE, BUT IT'S ONE OF THE ONES SHE USES IN HER

01:33:36 24 AUTOMATED CUSTOMER GROUP.

01:33:38 25 Q. OKAY. SO IF YOU COULD TAKE A LOOK IN YOUR BINDER, I THINK

01:33:41 1 THERE'S ONLY ONE DOCUMENT, THAT'S EXHIBIT 556?

01:33:44 2 A. YES.

01:33:44 3 Q. AND THIS IS AN ARISTA RESPONSE TO BLOOMBERG'S REQUEST FOR
01:33:54 4 PROPOSAL, CORRECT?

01:33:55 5 A. CORRECT.

01:33:56 6 Q. SO THIS WAS ARISTA TELLING BLOOMBERG ABOUT THE KIND OF
01:33:59 7 TECHNOLOGY IT HAS IN RESPONSE TO THEIR REQUEST?

01:34:01 8 A. EXACTLY.

01:34:03 9 MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE
01:34:05 10 EXHIBIT 556 INTO EVIDENCE.

01:34:06 11 MR. SILBERT: NO OBJECTION.

01:34:07 12 THE COURT: IT WILL BE ADMITTED.

01:34:09 13 (PLAINTIFF'S EXHIBIT 556 WAS ADMITTED INTO EVIDENCE.)

01:34:09 14 BY MR. PAK:

01:34:09 15 Q. AND WHAT I'M GOING TO DO IS FLIP TO SLIDE 8 IN
01:34:12 16 DR. CHEVALIER'S PRESENTATION.

01:34:16 17 AND SO WHAT WE'VE DONE HERE IS WE'VE JUST TAKEN A PORTION
01:34:21 18 OUT OF THAT LONGER DOCUMENT WE JUST SUBMITTED INTO EVIDENCE
01:34:24 19 RELATED TO BLOOMBERG.

01:34:27 20 AND CAN YOU EXPLAIN WHAT WE ARE SEEING HERE ON THE SCREEN
01:34:29 21 AND HOW THIS INFORMS YOUR VIEW ON WHETHER THE SAME RATE OR
01:34:32 22 DIFFERENT RATES SHOULD BE APPLIED TO HIGHLY AUTOMATED CUSTOMERS
01:34:37 23 VERSUS OTHER TYPES OF CUSTOMERS FOR DISGORGEMENT?

01:34:39 24 A. OKAY. SO AGAIN, THIS IS ONE PIECE OF THE EVIDENCE, BUT IN
01:34:43 25 THIS PARTICULAR DOCUMENT, IN RESPONSE TO AN RFP TO BLOOMBERG,

01:34:49 1 ARISTA IS EMPHASIZING, SIMPLY PUT, ARISTA USES INDUSTRY
01:34:54 2 STANDARD CLI, AND THEY SAY THAT CUSTOMERS CAN COPY AND PASTE
01:34:57 3 THE CONFIGURATIONS FROM THEIR CISCO INFRASTRUCTURE ONTO AN
01:35:02 4 ARISTA SWITCH, AND 90 PLUS OF THE COMMANDS WILL TAKE. ARISTA
01:35:06 5 HAS GONE TO EXTRAORDINARY LENGTHS TO ENSURE THAT ALL
01:35:10 6 CONFIGURATIONS AND TROUBLESHOOTING COMMANDS FOLLOW THE CLI.

01:35:13 7 SO WHAT THEY ARE REPRESENTING TO BLOOMBERG IS YOU CAN
01:35:16 8 TRANSITION TO ARISTA FROM CISCO AND YOUR SCRIPTS WILL WORK.

01:35:22 9 Q. OKAY. AND WE'VE SEEN EVIDENCE, HAVE WE NOT, THAT EVEN
01:35:26 10 AUTOMATION CUSTOMERS USE CLI, USE CISCO CLI THAT'S OFFERED BY
01:35:30 11 ARISTA?

01:35:31 12 MR. SILBERT: LEADING.

01:35:31 13 BY MR. PAK:

01:35:32 14 Q. LET ME ASK IT THIS WAY. WHAT EVIDENCE CAN YOU SUMMARIZE
01:35:35 15 THAT YOU'VE SEEN ON THE QUESTION OF WHETHER THE INFRINGING CLI
01:35:40 16 COMMANDS FROM USED BY AUTOMATION CUSTOMERS?

01:35:43 17 A. OKAY. SO I THINK WE SAW SOME DOCUMENTS THIS MORNING, FOR
01:35:47 18 EXAMPLE WITH DR. ELSTEN, I BELIEVE MR. SUMMERS TESTIFIED, I
01:35:52 19 DON'T KNOW IF THAT WAS WEDNESDAY, I THINK WEDNESDAY, THAT
01:35:56 20 INDEED, FACEBOOK AND OTHER AUTOMATION CUSTOMERS USE THE CLI IN
01:36:01 21 THEIR SCRIPTS. AND YOU KNOW, ARISTA IS ADVERTISING THIS CUT
01:36:08 22 AND PASTE FUNCTIONALITY TO SCRIPT-TYPE OR AUTOMATED-TYPE
01:36:14 23 CUSTOMERS.

01:36:14 24 Q. OKAY. NOW GOING TO THE SECOND CRITIQUE.

01:36:18 25 SO THE FIRST CRITIQUE IS WE SHOULD APPLY THE SAME RATE TO

01:36:22 1 ALL OF ARISTA'S CUSTOMERS AND NOT APPLY AN ARTIFICIALLY LOW
01:36:26 2 RATE; IS THAT CORRECT?

01:36:26 3 A. THAT IS MY FIRST CRITIQUE, YES.

01:36:29 4 Q. SO NOW LET'S LOOK AT YOUR SECOND PRIMARY CRITIQUE OF WHAT
01:36:32 5 MS. ELSTEN DID FOR APPORTIONMENT.

01:36:35 6 MR. PAK: AND IF YOU CAN PULL UP, MR. FISHER --
01:36:45 7 ACTUALLY, LET ME START HERE. ELSTEN SLIDE 63.

01:36:58 8 Q. SO AGAIN, THIS IS ONE OF MS. ELSTEN'S SLIDES; IS THAT
01:37:01 9 CORRECT?

01:37:01 10 A. YES.

01:37:01 11 Q. AND WHAT WAS SHE DOING HERE WITH RESPECT TO WHAT SHE CALLS
01:37:06 12 CLI APPORTIONMENT?

01:37:07 13 A. OKAY. SO YOU WILL RECALL THAT WHAT MS. ELSTEN DID WAS A
01:37:14 14 SORT OF TWO-STEP APPORTIONMENT.

01:37:17 15 FIRST, SHE APPORTIONED THE VALUE OF THE SWITCH TO THE
01:37:20 16 HARDWARE COMPONENT AND TO THE SOFTWARE COMPONENT, SO SHE
01:37:24 17 ATTEMPTED TO CREATE A VALUE FOR BOTH PARTS.

01:37:27 18 AND THEN SHE USED SOME DOCUMENT, SHE USED A DOCUMENT TO
01:37:32 19 ATTRIBUTE THEN, THE FRACTION OF THE SOFTWARE PIECE THAT'S
01:37:37 20 ATTRIBUTABLE TO THE CLI SOFTWARE.

01:37:40 21 SO TWO-STEP.

01:37:43 22 Q. OKAY. SO JUST TO BE CLEAR, THE BLUE HARDWARE, 36 PERCENT,
01:37:47 23 SHE SAYS THAT ARISTA'S PROFITS THAT ARE ATTRIBUTABLE TO
01:37:52 24 HARDWARE, THAT'S 36 PERCENT, CORRECT?

01:37:56 25 A. RIGHT. THEN SOFTWARE IS THE REST. 64 PERCENT OF WHICH

01:37:59 1 EVENTUALLY SHE WILL SAY A CHUNK OF IT IS CLI.

01:38:02 2 Q. NOW WE ARE GOING TO GO INTO THIS IN A LITTLE MORE DETAIL.

01:38:06 3 BUT AT A HIGH LEVEL, WHAT IS YOUR PRIMARY CRITIQUE OF THIS

01:38:10 4 HARDWARE TO SOFTWARE APPORTIONMENT THAT MS. ELSTEN DID?

01:38:12 5 A. SO THE HARDWARE TO SOFTWARE APPORTIONMENT, SHE USES SOME

01:38:19 6 UNRELIABLE EVIDENCE TO SPLIT BETWEEN THEM, BUT THAT ACTUALLY

01:38:26 7 TURNS OUT NOT TO BE VERY IMPORTANT IN THAT THE DOCUMENT THAT

01:38:29 8 SHE RELIES ON TO APPORTION THE SOFTWARE PIECE IS ACTUALLY A

01:38:34 9 DOCUMENT THAT ENUMERATES BOTH HARDWARE AND SOFTWARE FEATURES.

01:38:40 10 AND HER CALCULATION IS BASED ON BOTH HARDWARE AND SOFTWARE

01:38:43 11 FEATURES.

01:38:43 12 Q. OKAY. SO WE ARE GOING TO GO INTO THAT NOW.

01:38:46 13 SO LET'S TAKE A LOOK AT SLIDE 10 FROM YOUR PRESENTATION

01:38:51 14 TODAY. SO I THINK WE'VE SEEN THIS DOCUMENT, IT'S EXHIBIT 705

01:38:57 15 WHICH IS ADMITTED INTO EVIDENCE, IT'S THE CASCADE INSIDE

01:39:00 16 SURVEY; DO YOU RECALL THAT.

01:39:01 17 A. YES.

01:39:02 18 Q. AND DO YOU REMEMBER THAT MS. ELSTEN ACTUALLY USES THIS

01:39:05 19 SINGLE DOCUMENT TO COME UP WITH HER 12.5 PERCENT NUMBER FOR

01:39:11 20 SOFTWARE APPORTIONMENT?

01:39:12 21 A. THAT'S RIGHT. SO THIS NUMBER COMES FROM THIS -- IS

01:39:17 22 DERIVED FROM THIS CASCADE INSIGHT SURVEY.

01:39:23 23 Q. AND AS I UNDERSTAND MS. ELSTEN'S ANALYSIS, WHAT SHE DOES

01:39:26 24 IS SHE FINDS EIGHT FEATURES LISTED HERE, CORRECT?

01:39:28 25 A. YES.

01:39:28 1 Q. AND THEN SHE DIVIDES 100 PERCENT BY 8, AND THAT GIVES HER
01:39:34 2 12.5 PERCENT?

01:39:35 3 A. EXACTLY. YOU CAN SEE THERE ARE OVER TWO PAGES, BUT THERE
01:39:39 4 ARE EIGHT TOTAL FEATURES SHE'S USING AND SHE DIVIDES 1 BY 8.

01:39:43 5 Q. SO WE ARE GOING TO GO INTO MORE DETAILS, BUT FIRST OF ALL,
01:39:46 6 DO YOU AGREE IT'S PROPER TO JUST DIVIDE BY 8 SIMPLY BECAUSE
01:39:49 7 THERE ARE EIGHT FEATURES THAT ARE LISTED?

01:39:51 8 A. RIGHT. SO THIS DOCUMENT DOES NOT CONTAIN INFORMATION ON
01:39:55 9 THE RELATIVE VALUE OF THE FEATURES. I MEAN, IT HAS SOME TEXT,
01:39:59 10 BUT IT DOESN'T HAVE ANY QUANTITATIVE INFORMATION.

01:40:02 11 AND SHE DOESN'T USE THAT, SHE JUST TAKES AN EVEN COUNTING
01:40:05 12 OF THESE EIGHT FEATURES HERE IN THE DOCUMENT.

01:40:08 13 Q. OKAY. AND SO CAN YOU GIVE US A COMMON-WORLD EXAMPLE OF
01:40:13 14 WHY JUST COUNTING UP FEATURES ON THE LIST IS NOT THE RIGHT WAY
01:40:17 15 TO VALUE THE IMPORTANCE OF ANY ONE FEATURE?

01:40:20 16 A. WELL, I MEAN IT'S A LITTLE BIT LIKE A GROCERY LIST. SO IF
01:40:23 17 I GO TO THE GROCERY STORE FOR EIGHT THINGS, I WILL PUT EIGHT
01:40:26 18 THINGS DOWN ON THE LIST. BUT THAT DOESN'T MEAN THAT THEY ARE
01:40:29 19 OF EQUAL VALUE TO ME, OR THAT IF I RUN OUT OF ONE THING, IT'S
01:40:34 20 AS IMPORTANT AS EVERYTHING ELSE.

01:40:35 21 Q. BUT SETTING THAT ASIDE, HERE'S THE ISSUE HERE. ARE THESE
01:40:40 22 EIGHT FEATURES ALL PURELY SOFTWARE FEATURES?

01:40:44 23 A. NO. THEY ARE NOT. SO REMEMBER, THIS IS SUPPOSED TO BE
01:40:47 24 APPORTIONING OUT THE SOFTWARE COMPONENT, AND YOU CAN SEE THAT
01:40:52 25 THESE FEATURES ARE NOT ALL SOFTWARE FEATURES. SO SOME ARE

01:40:57 1 HARDWARE FEATURES IN THE HARDWARE AND SOFTWARE FEATURES.

01:41:02 2 SO FOR EXAMPLE, MY UNDERSTANDING IS THAT HIGH PORT
01:41:05 3 DENSITY, DEEP BUFFERS AND JUMBO FRAMES AND LOW LATENCY ARE
01:41:12 4 FEATURES THAT ARE EITHER HARDWARE OR A MIX OF HARDWARE AND
01:41:14 5 SOFTWARE.

01:41:15 6 Q. SO WHAT PROBLEMS DO YOU HAVE WHEN YOU SAY, I'VE ALREADY
01:41:18 7 APPORTIONED OUT THE HARDWARE, I'M ONLY SUPPOSED TO BE LOOKING
01:41:21 8 AT SOFTWARE, AND NOW ALL THE SUDDEN YOU ARE TALKING ABOUT
01:41:23 9 FEATURES THAT ARE BOTH HARDWARE AND SOFTWARE; WHAT'S THE
01:41:26 10 PROBLEM?

01:41:26 11 A. RIGHT. SO I'VE ESSENTIALLY DOUBLE-DEDUCTED OR DOUBLE
01:41:30 12 APPORTIONED.

01:41:31 13 Q. OKAY. AND DO YOU BELIEVE THAT'S PROPER?

01:41:33 14 A. NO.

01:41:33 15 Q. SO AGAIN, I UNDERSTAND YOU ARE NOT OFFERING ANY SPECIFIC
01:41:37 16 DISGORGEMENT OPINION TODAY AS AN AFFIRMATIVE NUMBER, CORRECT?

01:41:41 17 A. CORRECT, THAT'S RIGHT.

01:41:42 18 Q. SO YOU ARE HERE TO REBUT MS. ELSTEN'S ANALYSIS?

01:41:44 19 A. EXACTLY.

01:41:45 20 Q. BUT TO HELP THE JURY, WOULD THESE TWO CRITIQUES THAT YOU
01:41:50 21 IDENTIFIED, THE ONE ABOUT USING A SINGLE RATE, RATHER THAN TWO
01:41:53 22 FOR THE SAME -- FOR ALL THE CUSTOMERS?

01:41:56 23 A. CORRECT.

01:41:56 24 Q. AND THEN AVOIDING THIS DOUBLE COUNTING PROBLEM ON THE
01:41:59 25 SOFTWARE VERSUS HARDWARE, HAVE YOU PREPARED SOME MATERIAL TO

01:42:02 1 HELP THE JURY UNDERSTAND WHAT WOULD HAPPEN IF THEY WANTED TO
01:42:05 2 USE MS. ELSTEN'S DISGORGEMENT ANALYSIS BUT CORRECT FOR THESE
01:42:10 3 TWO PROBLEMS THAT YOU SAW?

01:42:15 4 A. SURE. SO I THINK WE HAVE A SLIDE.

01:42:18 5 Q. OKAY. LET'S GO TO SLIDE 12.

01:42:18 6 A. OKAY. SO AGAIN, THIS DOESN'T SOLVE ALL OF THE PROBLEMS
01:42:22 7 WITH THIS ANALYSIS. BUT, YOU KNOW, I HAVE OFFERED A CORRECTION
01:42:26 8 HERE.

01:42:28 9 SO MY CORRECTION IS THAT, YOU KNOW, MS. ELSTEN USES THIS
01:42:31 10 TWO-STEP APPROACH FOR APPORTIONMENT, AND SHE APPLIES THIS ONLY
01:42:37 11 TO THE NONAUTOMATED CUSTOMERS.

01:42:41 12 SO THAT'S WHAT SHE DOES ON THE LEFT, SOFTWARE VERSUS
01:42:44 13 HARDWARE, JUST FOR THE NONAUTOMATED CUSTOMERS, THEN A DIFFERENT
01:42:48 14 RATE FOR THE AUTOMATED CUSTOMERS.

01:42:50 15 AND MY PROPOSED ADJUSTMENTS ARE TO USE THIS FOR ALL OF THE
01:42:54 16 CUSTOMERS AND TO THEN JUST, BECAUSE IT'S A LIST OF IMPORTANT
01:43:00 17 SOFTWARE AND HARDWARE FEATURES, TREAT IT AS JUST THE TOTAL
01:43:05 18 SOFTWARE AND HARDWARE, AND USE THE SAME FRACTION OF THE TOTAL
01:43:09 19 THAT SHE USED OF THE SOFTWARE PIECE.

01:43:12 20 Q. AND WHAT'S THAT FRACTION?

01:43:17 21 A. IT'S 12.5 PERCENT.

01:43:19 22 MR. PAK: SO IF WE TURN TO SLIDE 13, MR. FISHER.

01:43:23 23 Q. SO IF YOU WERE TO NOW CORRECT FOR THESE TWO FLAWS YOU SAW
01:43:26 24 IN THE DISGORGEMENT AND THEN USE THE LOST PROFITS NUMBERS THAT
01:43:29 25 YOU IDENTIFIED USING THE MARKET SHARE ANALYSIS, CAN YOU WALK

01:43:33 1 THE JURY THROUGH THE NUMBERS THAT YOU GET THAT LOOKS AT BOTH
01:43:37 2 LOST PROFITS AND ARISTA'S PROFITS?

01:43:39 3 A. OKAY. SO AGAIN, THE LOST PROFITS PART, THE 335 AND 311
01:43:44 4 MILLION ARE MY OPINION. THE OTHER PARTS ARE MY CORRECTIONS TO
01:43:49 5 MS. ELSTEN'S OPINION. THEY ARE NOT MY OPINION.

01:43:52 6 BUT LET ME WALK YOU THROUGH. SO MAYBE START AT THE
01:43:56 7 BOTTOM.

01:43:56 8 IF NO LOST PROFITS ARE FOUND, THEN ALL OF THE REVENUES ARE
01:44:02 9 AVAILABLE TO BE DISGORGED AS INFRINGER'S PROFITS. AND THE
01:44:06 10 12.5 PERCENT OF THE TOTAL PROFIT WOULD BE 48 MILLION.

01:44:11 11 MOVING UP, IF LOST PROFITS ARE AWARDED, AS I SUGGEST,
01:44:18 12 REMEMBER WE HAVE DIFFERENT NUMBERS FROM CREHAN AND DELL'ORO.
01:44:23 13 LET ME FOCUS ON DELL'ORO, FOR COMPLETENESS.

01:44:26 14 IF THE LOST PROFITS ARE AWARDED OF 311 MILLION, THE
01:44:30 15 INFRINGER'S PROFITS AVAILABLE TO BE DISGORGED GO DOWN. AND SO
01:44:34 16 LET ME BE CLEAR WHY THAT IS.

01:44:36 17 A GIVEN DOLLAR OF ARISTA REVENUE IS EITHER AVAILABLE, A
01:44:43 18 LOST DOLLAR OF REVENUE TO CISCO, SO IT FIGURES INTO LOST
01:44:46 19 PROFITS, OR IT FIGURES INTO THE INFRINGER'S PROFITS AVAILABLE
01:44:50 20 FOR DISGORGEMENT, BUT NOT BOTH. SO THAT'S WHY THE INFRINGER'S
01:44:56 21 PROFITS GO DOWN WHEN THE LOST PROFITS ARE AWARDED.

01:44:59 22 Q. JUST TO BE CLEAR, SO FOR EXAMPLE, YOU TALKED ABOUT SALES
01:45:02 23 THAT COULD HAVE GONE TO OTHER VENDORS OTHER THAN CISCO IN THIS
01:45:05 24 BUT-FOR WORLD?

01:45:06 25 A. EXACTLY.

01:45:09 1 SO ARISTA, THESE ARE NOT SALES THAT CISCO WOULD HAVE MADE,
01:45:15 2 SO THEY ARE NOT IN LOST PROFITS. BUT THEY ARE SALES THAT
01:45:18 3 ARISTA MADE, AND BECAUSE ARISTA MADE THEM AND THEY MADE THEM
01:45:22 4 USING CISCO'S CLI, THEY ARE AVAILABLE FOR THIS INFRINGER'S
01:45:28 5 PROFITS DISGORGEMENT.

01:45:30 6 Q. SO JUST TO BE CLEAR ON THE RECORD, IF YOU USE THE CREHAN
01:45:33 7 DATA AND THE JURY FINDS THAT YOUR LOST PROFITS NUMBERS ARE THE
01:45:37 8 RIGHT ONES AND THEN THEY USE THE -- THEY USE MS. ELSTEN'S
01:45:42 9 DISGORGEMENT WITH THE CORRECTIONS, THE TOTAL WOULD BE
01:45:45 10 \$355 MILLION IN DAMAGES; IS THAT RIGHT?

01:45:48 11 A. THAT'S CORRECT.

01:45:49 12 Q. IF THEY WERE TO USE THE DELL'ORO MARKET NUMBERS, IT WOULD
01:45:53 13 BE 300 MILLION IN LOST PROFITS, 22 MILLION IN INFRINGER'S
01:45:57 14 PROFITS, SO THE FINAL DIAGONALS WOULD BE \$333 MILLION?

01:46:01 15 A. CORRECT.

01:46:01 16 Q. AND IF THE JURY WERE TO FIND NO LOST PROFITS TO CISCO, AND
01:46:06 17 JUST THE INFRINGER'S PROFITS, THAT WOULD BE \$48 MILLION; IS
01:46:11 18 THAT CORRECT?

01:46:11 19 A. THAT'S CORRECT.

01:46:11 20 Q. OKAY. SO BRIEFLY, I WANT TO TOUCH ON THE ISSUE ABOUT FAIR
01:46:16 21 USE.

01:46:20 22 WE HEARD VERY BRIEF TESTIMONY FROM MS. ELSTEN ON THIS.
01:46:23 23 BUT OUT OF FAIR USE, THERE ARE FOUR FACTORS. I THINK THE
01:46:25 24 ECONOMISTS IN THIS CASE ARE FOCUSSED ON THE LAST FACTOR WHICH
01:46:28 25 IS THE MARKET IMPACT?

01:46:29 1 A. CORRECT. SO WE ARE LOOKING AT MARKET HARM.

01:46:32 2 Q. AND WHAT IS YOUR OPINION REGARDING FACTOR FOUR, WHICH IS
01:46:37 3 WHAT IS THE MARKET IMPACT OF THE INFRINGING USE OF CISCO CLI?

01:46:42 4 A. SO IT'S MY OPINION THAT ARISTA'S USE OF THE INFRINGING CLI
01:46:48 5 HARMS CISCO IN THE MARKETPLACE. AND CISCO, BECAUSE OF THAT,
01:46:54 6 HAS LOST SOME OF THE VALUE OF ITS INTELLECTUAL PROPERTY.

01:46:59 7 AND YOU KNOW, THE REASONS THAT I BELIEVE THAT SHOULD BE
01:47:03 8 CLEAR FROM THE TESTIMONY THAT I'VE ALREADY GIVEN, ALL RIGHT.

01:47:07 9 SO WE HAVE SEEN EVIDENCE THAT CISCO LOST SHARE IN THE
01:47:11 10 MARKETPLACE TO ARISTA DUE TO ARISTA'S INFRINGEMENT.

01:47:19 11 Q. OKAY. AND DO YOU HAVE AN UNDERSTANDING WHETHER ARISTA'S
01:47:22 12 SWITCHES AND CISCO'S SWITCHES USE THE SAME SOURCE CODE OR
01:47:25 13 DIFFERENT SOURCE CODE?

01:47:27 14 A. SO MY UNDERSTANDING IS THAT FROM THE TESTIMONY THAT I'VE
01:47:32 15 HEARD, THAT THEY USE DIFFERENT SOURCE CODE.

01:47:34 16 Q. STOW WHAT'S THE IMPLICATION OF THAT WHEN YOU ARE LOOKING
01:47:36 17 AT THE ECONOMIC VALUE OF THE CISCO CLI?

01:47:38 18 A. SO THE ECONOMIC OPINIONS THAT I HAVE STATED HERE ARE
01:47:43 19 OPINIONS ABOUT THE INTERFACE AND TRAINING AND EASE OF USE AND
01:47:49 20 CUTTING AND PASTING SCRIPTS.

01:47:52 21 SO THAT REALLY DOESN'T HAVE ANYTHING TO DO WITH THE SOURCE
01:48:00 22 CODE. CISCO AND ARISTA ARE USING DIFFERENT SOURCE CODE, BUT
01:48:02 23 THEY ARE BOTH GETTING, FROM MY ANALYSIS, THE BENEFIT FROM THE
01:48:06 24 CLI AND THE COPYRIGHTED WORK.

01:48:07 25 Q. SO LOOKING AT ALL THE EVIDENCE AND THE ANALYSIS YOU'VE

01:48:10 1 DONE, WHAT'S YOUR OPINION AS TO WHETHER THE CISCO CLI AS A USER
01:48:13 2 INTERFACE HAS ECONOMIC VALUE SETTING ASIDE THE SOURCE CODE?

01:48:17 3 A. SO IT'S MY OPINION, AS I THINK MY TESTIMONY HAS MADE
01:48:21 4 CLEAR, THAT THE CLI ITSELF HAS ECONOMIC VALUE.

01:48:23 5 Q. OKAY. AND JUST ONE LAST THING, I KNOW WE TALKED A LOT
01:48:27 6 ABOUT BUT FOR CAUSATION, AND THAT WAS SOMETHING THAT WE'VE
01:48:30 7 HEARD A LOT ABOUT IN THIS CASE, COULD YOU JUST HELP THE JURY
01:48:33 8 OUT A LITTLE BIT, AND USING A COMMON EXAMPLE, CAN YOU EXPLAIN
01:48:36 9 TO US WHAT YOU MEAN BY A BUT-FOR CAUSATION?

01:48:39 10 A. OKAY. FIRST, LET ME JUST REPEAT WHAT BUT-FOR CAUSATION
01:48:44 11 IS.

01:48:44 12 SO IN MY LOST PROFITS ANALYSIS, LOST PROFITS ARE WARRANTED
01:48:48 13 IF CISCO LOSES SALES THAT IT WOULD NOT HAVE LOST IF ARISTA DID
01:49:00 14 NOT INFRINGE CISCO'S CLI.

01:49:02 15 AND MAYBE I WILL TRY TO BE A LITTLE MORE, YOU KNOW,
01:49:06 16 REAL-WORLD ABOUT THAT.

01:49:07 17 SO IMAGINE THAT I HAD A VERY STRONG PREFERENCE TO GET A
01:49:12 18 RED CAR. THAT I JUST -- YOU KNOW, I WAS GOING TO GET A RED
01:49:16 19 CAR. I HAVEN'T GOTTEN ONE YET, BUT I WOULD LIKE ONE.

01:49:19 20 SO I GET -- IF I DECIDE THAT MY HEART IS SET ON GETTING A
01:49:24 21 RED CAR AND I'M IN A HURRY, I MIGHT GO TO SOME AUTO DEALERS AND
01:49:29 22 ASK THEM TO SHOW ME WHAT THEY HAD ON THE LOT IN RED.

01:49:32 23 AND I WOULD, YOU KNOW, GET MORE THAN ONE CHOICE, I'M SURE,
01:49:35 24 IF I SHOPPED AROUND.

01:49:36 25 AND THEN, YOU KNOW, I WOULD HAVE A SET OF RED CARS FROM

01:49:41 1 WHICH TO CHOOSE. AND THEN WHEN I CHOOSE THE CAR, I WILL BE
01:49:45 2 CHOOSING ON THE BASIS OF OTHER FEATURES LIKE, IS IT THE RIGHT
01:49:48 3 SIZE? YOU KNOW, DOES IT HAVE OTHER FEATURES THAT I LIKE,
01:49:51 4 RIGHT?

01:49:52 5 AND IF YOU WERE TO ASK ME AFTERWARD, YOU KNOW, WHY DID YOU
01:49:56 6 CHOOSE THE COROLLA OVER THE CIVIC, I WOULDN'T SAY THAT IT WAS
01:49:59 7 RED, I WOULD SAY BECAUSE, YOU KNOW, IT WAS THE RIGHT SIZE OR AT
01:50:03 8 THE RIGHT PRICE.

01:50:04 9 Q. BUT WHAT IS THE IMPORTANCE OF THE FACT THAT YOU WANTED A
01:50:07 10 RED CAR, HOW DOES THAT PLAY INTO YOUR DECISIONMAKING PROCESS?

01:50:13 11 A. SO I WOULDN'T HAVE BOUGHT THE CAR I BOUGHT IF IT WEREN'T
01:50:17 12 RED.

01:50:18 13 Q. AND DO YOU BELIEVE THE SAME APPLIES TO THE INFRINGING USE
01:50:21 14 OF CLI?

01:50:22 15 A. I DO.

01:50:25 16 MR. PAK: THANK YOU, YOUR HONOR.

01:50:26 17 I PASS THE WITNESS.

01:50:27 18 THE COURT: THANK YOU.

01:50:28 19 MR. SILBERT?

01:50:28 20 **CROSS-EXAMINATION**

01:50:28 21 BY MR. SILBERT:

01:50:32 22 Q. GOOD AFTERNOON, DR. CHEVALIER.

01:50:33 23 A. GOOD AFTERNOON.

01:50:34 24 Q. YOU WERE IN COURT TODAY WHEN MR. SADANA TESTIFIED,
01:50:39 25 CORRECT?

01:50:41 1 A. I DID -- I WAS. SORRY.

01:50:43 2 Q. AND YOU HEARD MR. SADANA TESTIFY ABOUT ARISTA'S SALES
01:50:57 3 INTERACTIONS WITH MICROSOFT; RIGHT?

01:50:58 4 A. I DID.

01:50:59 5 Q. YOU HEARD HIM TALK ABOUT A TRANSACTION IN WHICH MICROSOFT
01:51:04 6 HAD ULTIMATELY A MILLION SERVERS THAT NEEDED TO BE CONNECTED
01:51:07 7 WITH SWITCHES; RIGHT?

01:51:08 8 A. I DID.

01:51:09 9 Q. AND YOU HEARD MR. SADANA EXPLAIN THAT IN THAT TRANSACTION
01:51:14 10 WHERE ARISTA WAS COMPETING AGAINST CISCO IN LIGHT OF ARISTA'S
01:51:19 11 BETTER PORT DENSITY, JUST POWERING THE CISCO SWITCHES FOR THREE
01:51:26 12 YEARS, THAT ALONE COST MORE THAN PURCHASING, POWERING AND
01:51:33 13 OPERATING THE ARISTA SWITCHES FOR THAT SAME THREE-YEAR PERIOD;
01:51:38 14 RIGHT?

01:51:38 15 A. I THINK THAT'S SOMEWHAT MORE DETAIL THAN I HEARD, BUT
01:51:41 16 OKAY.

01:51:42 17 Q. OKAY. AND YOU HEARD HIM TALK ABOUT AUTOMATION AND HOW CLI
01:51:47 18 COMMANDS ARE ACTUALLY USED IN AUTOMATION; RIGHT?

01:51:50 19 A. YES, I DID.

01:51:50 20 Q. AND YOU'VE CONSIDERED, I KNOW, THE MICROSOFT RFP DOCUMENT,
01:51:56 21 WHY DON'T WE LOOK AT MS. ELSTEN'S SLIDE 41.

01:52:06 22 THIS IS THE MICROSOFT RFP WHERE BY FAMILIAR COMMAND-LINE
01:52:12 23 INTERFACE THEY ASSIGNED A MICROSOFT WEIGHT THAT CORRESPONDS TO
01:52:16 24 INFORMAL REQUESTS FEATURE WE HAVE NO PARTICULAR PLANS TO USE.
01:52:19 25 WE TALKED ABOUT THIS DOCUMENT BEFORE; RIGHT.

01:52:21 1 A. UH-HUH, WE HAVE.

01:52:23 2 Q. AND IN LIGHT OF ALL OF THIS INFORMATION THAT YOU'VE HEARD
01:52:26 3 AND CONSIDERED, IS IT STILL YOUR OPINION THAT ARISTA WOULD HAVE
01:52:32 4 BEEN UNABLE TO SELL TO MICROSOFT IF ARISTA DID NOT OFFER A CLI
01:52:37 5 THAT INFRINGED CISCO'S COPYRIGHTS?

01:52:40 6 A. IT IS.

01:52:41 7 Q. OKAY. AND YOU GAVE A CAR ANALOGY A MINUTE AGO?

01:52:45 8 A. YES.

01:52:45 9 Q. AND YOUR HEART -- IN YOUR ANALOGY YOUR HEART IS SET ON
01:52:49 10 RED; RIGHT?

01:52:49 11 A. YES.

01:52:50 12 Q. AND YOU ARE ONLY GOING TO CONSIDER RED CARS, THAT'S THE
01:52:53 13 ONLY THING YOU ARE GOING TO CONSIDER; RIGHT?

01:52:55 14 A. CORRECT.

01:52:55 15 Q. SO IF IT'S NOT RED YOU ARE NOT EVEN GOING TO LOOK AT IT
01:52:58 16 AND THEREFORE EVERY NON-RED CAR IS SIMPLY EXCLUDED FROM ANY
01:53:04 17 POSSIBILITY OF BEING THE ONE THAT YOU PURCHASE; RIGHT?

01:53:06 18 A. THAT WAS WHAT I SAID ABOUT THE CAR.

01:53:09 19 Q. BUT CORPORATIONS DON'T MAKE MULTI MILLION OR HUNDRED
01:53:14 20 MILLION DOLLAR PURCHASE DECISIONS BY HAVING THEIR HEARTS SET ON
01:53:19 21 A PARTICULAR COLOR; RIGHT?

01:53:20 22 A. NO, OF COURSE NOT.

01:53:22 23 Q. RIGHT.

01:53:22 24 A. NO, THEY DON'T.

01:53:24 25 Q. IN FACT, YOU TESTIFIED ABOUT THIS WHEN YOU WERE HERE

01:53:28 1 PREVIOUSLY; RIGHT, YOU SAID THAT CUSTOMERS IN THIS SPACE ARE
01:53:31 2 MAKING PROFIT MAXIMIZING DECISIONS, CORRECT?

01:53:34 3 A. YES.

01:53:35 4 Q. THEY ARE SAYING, THERE'S A COST TO THIS FEATURE AND A
01:53:40 5 BENEFIT OF THIS FEATURE. THERE'S A COST OF THIS AND A BENEFIT
01:53:44 6 TO THIS, I'M GOING THAT TO WEIGH THEM ALL TOGETHER AND I'M
01:53:49 7 GOING TO PICK THE ONE THAT IF I HAVES ME THE MOST BENEFIT;
01:53:51 8 RIGHT?

01:53:51 9 A. CORRECT.

01:53:52 10 Q. NOW HAVING AN UNFAMILIAR CLI, THE COST THAT THAT EQUATES
01:53:57 11 TO IS A RETRAINING COST; RIGHT?

01:54:00 12 A. IT'S IN PART A RETRAINING COST, IT'S ALSO A RE-SCRIPTING,
01:54:05 13 REPROGRAMMING COST.

01:54:07 14 I THINK MR. SADANA, IN THE ANSWER TO THE LAST QUESTION
01:54:10 15 THAT MR. NELSON POSED, YOU KNOW, SAID IT WOULD BE QUITE COSTLY
01:54:14 16 IF HIS CUSTOMERS HAD TO REWRITE THEIR SCRIPTS IF ARISTA COULD
01:54:18 17 NOT USE THE CISCO CLI.

01:54:20 18 Q. I THINK HE SAID IT WOULD BE A HUGE PAIN, SOMETHING ALONG
01:54:23 19 THOSE LINES; RIGHT?

01:54:24 20 A. OKAY.

01:54:25 21 Q. AND YOU AGREE, DON'T YOU, THAT NOWHERE IN YOUR EXPERT
01:54:31 22 REPORTS IN THIS CASE DO YOU ACTUALLY QUANTIFY WHAT THOSE COSTS,
01:54:36 23 RETRAINING AND RE-SCRIPTING, ET CETERA, WHAT THOSE COSTS WOULD
01:54:40 24 BE; RIGHT?

01:54:41 25 A. I DON'T QUANTIFY THEM. THOUGH I USE THE EVIDENCE FROM THE

01:54:45 1 RECORD OF, YOU KNOW, HOW ARISTA TARGETS ITS CUSTOMERS BY, YOU
01:54:54 2 KNOW, ADVERTISING THE LOW COST OF RETRAINING, RE-SCRIPTING,
01:54:58 3 ET CETERA.

01:54:58 4 Q. RIGHT. BUT YOU DON'T EVER PUT ANY NUMBER ON THEM; RIGHT?

01:55:01 5 A. NO, I THINK THAT WOULD BE IMPOSSIBLE TO DO.

01:55:04 6 Q. OKAY. BUT YOU DO AGREE THAT, UNLIKE YOUR "I'M ONLY GOING
01:55:09 7 TO BUY A RED CAR" EXAMPLE, THE COST OF RETRAINING OR
01:55:13 8 RE-SCRIPTING IN THESE TYPES OF DECISIONS, THAT'S JUST ONE MORE
01:55:17 9 COST THAT GETS WEIGHED AGAINST EVERY OTHER KIND OF COST THAT
01:55:21 10 GOES INTO THE DECISION; RIGHT?

01:55:22 11 A. IT IS -- IT IS AN IMPORTANT COST, YES.

01:55:25 12 Q. RIGHT. BUT IT'S NOT LIKE THE FIRST LEVEL OF THEIR
01:55:29 13 ANALYSIS IS, DOES IT HAVE A CISCO-LIKE, SAY YOU ARE MICROSOFT,
01:55:34 14 IT'S NOT LIKE THE FIRST LEVEL OF YOUR ANALYSIS IS, DOES THIS
01:55:37 15 HAVE A CISCO-LIKE CLI?

01:55:39 16 IN OTHER WORDS, IS IT A RED CAR, AND IF NOT I'M NOT EVEN
01:55:42 17 GOING TO LOOK AT IT, NO MATTER HOW MUCH MORE POWER EFFICIENT IT
01:55:46 18 IS, HOW MUCH MORE RELIABLE IT IS, HOW MUCH BETTER LATENCY IT
01:55:50 19 HAS, HOW MUCH MORE PROGRAMMABLE IT IS, ET CETERA, ET CETERA,
01:55:57 20 ET CETERA, THAT'S NOT THE WAY TO DO IT, RIGHT?

01:55:57 21 A. I WILL SAY THAT, CLEARLY, THEY NEED TO EVALUATE ALL THESE
01:56:01 22 COSTS, BUT IT WAS THE TESTIMONY OF A NUMBER OF ARISTA
01:56:04 23 EXECUTIVES THAT GETTING IN THE DOOR AT CUSTOMERS, WITH
01:56:10 24 CUSTOMERS, YOU KNOW, THEY DID NEED THIS DROP-IN REPLACEMENT
01:56:15 25 CHARACTERISTICS.

01:56:16 1 AND I THINK MR. SADANA EVEN TESTIFIED TODAY THAT ONE OF
01:56:20 2 THE REASONS THEY GOT THIS LARGE MICROSOFT DEAL THAT YOU ARE
01:56:25 3 DESCRIBING IS BECAUSE ARISTA HAD DEVELOPED PREVIOUS
01:56:28 4 EXPERIENCE -- THAT MICROSOFT HAD DEVELOPED PREVIOUS EXPERIENCE
01:56:31 5 WITH ARISTA. HE DID SAY THAT THAT WAS AN IMPORTANT PART.

01:56:34 6 AND GETTING THAT INITIAL EXPERIENCE, YOU KNOW, IS, YOU
01:56:38 7 KNOW, THEY HAVE TESTIFIED THAT THIS DROP-IN REPLACEMENT
01:56:42 8 CHARACTERISTIC WAS IMPORTANT.

01:56:44 9 Q. THEY DID?

01:56:45 10 A. THEY DID.

01:56:46 11 Q. WELL, OKAY, YOU'VE HEARD TESTIMONY OR YOU'VE SEEN EVIDENCE
01:56:49 12 IN THE RECORD THAT, FOR EXAMPLE, FACEBOOK USES MULTIPLE
01:56:54 13 DIFFERENT VENDOR'S SWITCHES; RIGHT?

01:56:56 14 A. YES, THEY DO.

01:56:57 15 Q. USES JUNIPER SWITCHES?

01:56:59 16 A. YES.

01:57:00 17 Q. JUNIPER IS NOT A DROP-IN REPLACEMENT FOR CISCO; RIGHT,
01:57:03 18 WITH RESPECT TO THE CLI?

01:57:04 19 A. SO MY UNDERSTANDING FROM FACEBOOK IS THAT MY UNDERSTANDING
01:57:08 20 FROM THE RECORD IS THAT THEY USED DIFFERENT SWITCHES FOR
01:57:11 21 DIFFERENT PURPOSES IN DIFFERENT PARTS OF THE NETWORK.

01:57:13 22 Q. THEY USED -- FACEBOOK USES ITS OWN SWITCHES WITH ITS OWN
01:57:17 23 OPERATING SYSTEM, FBOSS; RIGHT?

01:57:19 24 A. YES, THEY DO.

01:57:20 25 Q. AND YOU HEARD MR. SUMMERS TALK ABOUT HOW THE FBOSS CLI

01:57:25 1 INTERFACE IS COMPLETELY DIFFERENT FROM THE CISCO'S INTERFACE;
01:57:28 2 RIGHT?
01:57:28 3 A. YES.
01:57:28 4 Q. CERTAINLY NOT A DROP-IN REPLACEMENT; RIGHT?
01:57:32 5 A. NO.
01:57:32 6 Q. SO THERE, IN THOSE SITUATIONS THEY ARE BUYING BLUE CARS,
01:57:36 7 YELLOW CARS, WHITE CARS, WHATEVER COLOR CAR THEY WANT; RIGHT?
01:57:40 8 A. THEY ARE BUYING A LIMITED NUMBER OF INTERFACES.
01:57:44 9 Q. BUT YOUR POSITION IS THAT IN THE CASE OF ARISTA, THEY ARE
01:57:49 10 NOT EVEN GOING TO CONSIDER -- IN THE CASE OF FACEBOOK, NOT EVEN
01:57:53 11 GOING TO CONSIDER IT IF IT DOESN'T HAVE A CISCO-LIKE CLI,
01:57:58 12 THAT'S YOUR POSITION?
01:57:58 13 A. MY POSITION IS THEY WOULD NOT HAVE INITIALLY GAINED ENTRY
01:58:02 14 INTO FACEBOOK WITHOUT A CISCO-LIKE CLI.
01:58:04 15 Q. OKAY. MR. PAK SHOWED YOU ARISTA'S RFP RESPONSE TO
01:58:11 16 BLOOMBERG, THE ONE DOCUMENT IN YOUR BINDER; RIGHT?
01:58:14 17 A. YES.
01:58:14 18 Q. AND THAT'S EXHIBIT 556, TO BE CLEAR?
01:58:18 19 A. YES.
01:58:18 20 Q. AND WHAT YOU LOOKED AT IN THAT DOCUMENT IS THE FACT THAT
01:58:21 21 IT MENTIONS, THAT DOCUMENT HAS A STATEMENT ABOUT HOW ARISTA HAS
01:58:27 22 A FAMILIAR CLI AND YOU CAN MIGRATE YOUR CONFIGURATION EASILY;
01:58:33 23 RIGHT?
01:58:33 24 A. YES.
01:58:34 25 Q. AND YOUR CONCLUSION IS THAT IF THE RFP RESPONSE, IF IT

01:58:38 1 MENTIONS A FAMILIAR CLI, THEN A FAMILIAR CLI MUST BE A
01:58:42 2 REQUIREMENT TO DO BUSINESS WITH BLOOMBERG; RIGHT?

01:58:46 3 A. NO, I DIDN'T SAY THAT ABOUT THE RFP RESPONSE. WHAT I WAS
01:58:53 4 TESTIFYING TO THERE IS THAT, YOU KNOW, ARISTA, BY ATTEMPTING TO
01:58:58 5 DEMONSTRATE TO BLOOMBERG THE IMPORTANCE OF -- THE FACT THAT
01:59:05 6 THEY HAVE THIS DROP-IN REPLACEMENT, SHOWS THAT IT'S IMPORTANT
01:59:10 7 TO THE CUSTOMER, AT LEAST THAT ARISTA PERCEIVES IT AS SO.

01:59:13 8 Q. OKAY. AND THE RFP RESPONSE, IT'S THIRD-ODD PAGES OF
01:59:16 9 SINGLE SPACE TEXT; RIGHT? 31, ROUGHLY?

01:59:20 10 A. YES.

01:59:21 11 Q. WITH SOME TABLES?

01:59:22 12 A. WITH SOME FIGURES AND THINGS.

01:59:24 13 Q. FIGURES AND TABLES.

01:59:27 14 AND IT DISCUSSES A LOT OF FEATURES; RIGHT.

01:59:29 15 A. IT SURE DOES, YEAH.

01:59:30 16 Q. DO YOU THINK EVERY SINGLE FEATURE THAT'S MENTIONED IN HERE
01:59:32 17 IS A RED CAR FEATURE, EVERY SINGLE ONE THAT'S MENTIONED HERE IS
01:59:36 18 SOMETHING THAT BLOOMBERG IS SIMPLY NOT GOING TO BUY THE SWITCH
01:59:41 19 JUST BECAUSE IT SHOWS UP IN HERE SOMEWHERE?

01:59:43 20 A. NO. I DON'T THINK THAT.

01:59:45 21 Q. OKAY. AND YOU KNOW, DON'T YOU, THAT WHEN COMPANIES ARE
01:59:49 22 PREPARING RFP RESPONSES, THEY USE A LOT OF BOILER PLATE?

01:59:54 23 A. I DO KNOW THAT THEY USE BOILER PLATE. THOUGH I HAVE
01:59:57 24 LOOKED AT ARISTA'S RFP RESPONSES AND THEY DON'T USE THE SAME
02:00:01 25 LANGUAGE FOR EVERY CUSTOMER.

02:00:09 1 Q. I WANT TO UNDERSTAND YOUR DISGORGEMENT OPINION. YOUR
02:00:13 2 OPINION, FIRST OF ALL, IS THERE'S NO BASIS TO TREAT WHAT
02:00:19 3 MS. ELSTEN CALLS HIGHLY AUTOMATED CUSTOMERS, FACEBOOK, GOOGLE,
02:00:25 4 MICROSOFT, APPLE, ET CETERA, DIFFERENTLY FROM ANY OTHER
02:00:29 5 CUSTOMERS WHEN YOU'RE VALUING THE CLI, A FAMILIAR CLI RELATIVE
02:00:35 6 TO ALL THE OTHER FEATURES OF THE SWITCH; RIGHT?

02:00:38 7 A. YES. AND THAT THE METHODOLOGY THAT SHE USES FOR
02:00:44 8 APPORTIONMENT IN THE OTHER -- FOR THE OTHER CUSTOMERS, WHILE
02:00:48 9 FLAWED, IS EQUALLY APPROPRIATE TO THE HIGHLY AUTOMATED
02:00:51 10 CUSTOMERS.

02:00:52 11 Q. RIGHT. AND CAN WE LOOK FOR A SECOND AT SLIDE 102 OF
02:00:59 12 DR. CHEVALIER'S SLIDE DECK.

02:01:07 13 THIS IS A SLIDE THAT YOU DIDN'T DISCUSS, I THINK TODAY,
02:01:10 14 BUT YOU DID DISCUSS BACK IN YOUR ORIGINAL TESTIMONY; RIGHT?

02:01:13 15 A. RIGHT.

02:01:14 16 Q. AND WHAT YOU'VE DONE HERE IS SHOW THREE CUSTOMERS OF
02:01:18 17 ARISTA, AND NEXT TO THOSE CUSTOMERS YOU'VE SHOWN SOME
02:01:24 18 INFORMATION THAT SUGGESTS THAT -- INTERNAL ARISTA DOCUMENTS
02:01:27 19 THAT SUGGEST THAT THE CLI WAS AN IMPORTANT SELLING FACTOR,
02:01:31 20 ACCORDING TO YOU; RIGHT?

02:01:32 21 A. YEAH. THAT'S WHAT THESE THREE SHOW, YEAH.

02:01:35 22 Q. RIGHT. SO THERE'S A, NEXT TO "PREMIERE," THERE'S A KEY
02:01:40 23 WIN FACTORS, AND ONE OF THEM IS CLI IS CISCO-LIKE; RIGHT?

02:01:44 24 A. RIGHT.

02:01:45 25 Q. AND NEXT TO A COMPANY CALLED ALLEGACY, THERE'S KEY SELLING

02:01:50 1 POINTS AND FAMILIAR CLI, IOS IS ONE OF THOSE KEY SELLING
02:01:56 2 POINTS; RIGHT?
02:01:57 3 A. RIGHT.
02:01:57 4 Q. AND MEDICAL MUTUAL, THERE'S WHY WE WON, AND THERE'S A LIST
02:02:01 5 OF SOME FEATURES AND FAMILIARITY WITH CLI IS ONE OF THEM;
02:02:05 6 RIGHT?
02:02:05 7 A. RIGHT.
02:02:06 8 Q. NOW, HAVE YOU EVER HEARD OF ANY OF THESE COMPANIES BEFORE
02:02:11 9 THIS LAWSUIT?
02:02:12 10 A. ACTUALLY, I THINK I HAVE HEARD OF MEDICAL MUTUAL.
02:02:16 11 Q. SO MEDICAL MUTUAL, IS IT MEDICAL MUTUAL OF OHIO, IS THAT
02:02:20 12 THE COMPANY?
02:02:21 13 A. I THINK IT'S AN INSURANCE COMPANY.
02:02:23 14 Q. YOU DID HAVE ACCESS TO ARISTA'S SALES DATA; RIGHT?
02:02:26 15 A. RIGHT.
02:02:27 16 Q. AND YOU KNOW THAT THE SALES TO PREMIERE, WE'RE NOT TALKING
02:02:35 17 ABOUT PROFITS HERE, WE ARE TALKING ABOUT REVENUES. THE SALES
02:02:38 18 REVENUES FROM ARISTA TO PREMIERE WAS ABOUT \$72,000; RIGHT?
02:02:42 19 A. YES, I KNOW PREMIERE IS A SMALL CUSTOMER.
02:02:44 20 Q. AND THAT'S TOTAL OVER THE ENTIRE FIVE-PLUS YEAR DAMAGES
02:02:48 21 PERIOD; RIGHT?
02:02:49 22 A. RIGHT.
02:02:50 23 Q. OKAY. AND ALLEGACY, YOU KNOW THE TOTAL SALES TO WAS ABOUT
02:02:59 24 \$75,000; RIGHT?
02:03:00 25 A. RIGHT.

02:03:00 1 Q. AND THE TOTAL SALES TO MEDICAL MUTUAL OVER THE DAMAGES
02:03:05 2 PERIOD WAS ABOUT \$275,000; RIGHT?

02:03:09 3 A. THAT DOESN'T SOUND QUITE RIGHT TO ME, BUT IF YOU REPRESENT
02:03:16 4 IT, I WILL TAKE IT.

02:03:17 5 Q. THESE ARE SMALLER CUSTOMERS WITH MUCH SMALLER SCALE DATA
02:03:23 6 CENTERS THAN COMPANIES LIKE FACEBOOK, MICROSOFT, GOOGLE; RIGHT?

02:03:27 7 A. YES.

02:03:27 8 Q. AND THEY OPERATE THEIR DATA CENTERS IN VERY DIFFERENT WAYS
02:03:31 9 THAN DO FACEBOOK, MICROSOFT AND GOOGLE; RIGHT?

02:03:35 10 A. YES. AND I BELIEVE WHEN I TESTIFIED ABOUT THIS VERY
02:03:40 11 DOCUMENT, IT'S NOW GOING BACK A WEEK, BUT WHAT I REMEMBER IS I
02:03:46 12 MOVED ON TO SAY, IN FACT, YOU KNOW, THAT THE KEY WIN FACTOR
02:03:52 13 BEING THE CLI BECAUSE OF THE KIND OF BUT-FOR ARGUMENT THAT I
02:03:56 14 JUST MADE, YOU KNOW, WON'T BE THE TYPICAL THING.

02:04:00 15 Q. OKAY. I WANT TO SHOW YOU -- YOU SAID THAT MS. ELSTEN'S
02:04:09 16 ALLOCATION FOR PURPOSES OF DISGORGEMENT, CAME FROM ONE
02:04:17 17 DOCUMENT; RIGHT?

02:04:17 18 A. THE NUMBERS THAT SHE USED CAME FROM ONE DOCUMENT.

02:04:20 19 Q. AND THAT WAS THE CASCADE REPORT, THAT LIST FROM THE
02:04:24 20 CASCADE REPORT, COMMISSIONED BY CISCO?

02:04:26 21 A. CORRECT.

02:04:34 22 MR. SILBERT: JEFF, COULD I ASK YOU TO SHOW ON THE
02:04:36 23 SCREEN, MS. ELSTEN'S SLIDE 62.

02:04:44 24 Q. YOU SAW MS. ELSTEN PRESENT THIS SLIDE; RIGHT?

02:04:47 25 A. I DID.

02:04:47 1 Q. AND THIS IS THE SLIDE WHERE SHE'S EXPLAINING, SHE'S
02:04:51 2 SUMMARIZING, AFTER GOING THROUGH SOME OTHER SLIDES, HOW SHE
02:04:55 3 MADE HER ALLOCATION, HER SOFTWARE APPORTIONMENT; RIGHT?

02:04:59 4 A. YES. THOUGH SHE RELIES ON THE ONE DOCUMENT.

02:05:04 5 Q. YOU SAW, IN FACT, WHAT SHE DID WAS SHE RELIED ON SIX
02:05:09 6 DIFFERENT DOCUMENTS OR CATEGORIES OF DOCUMENTS, EACH OF WHICH
02:05:15 7 SHE USED TO GET SOME TYPE OF ALLOCATION; RIGHT?

02:05:17 8 A. YES, SHE DID SHOW EXAMPLES OF OTHER KINDS OF DOCUMENTS.

02:05:23 9 Q. AND SO, AND SHE'S SHOWING THE ALLOCATION OF THE CLI TO THE
02:05:29 10 TOTAL SOFTWARE PACKAGE IN EACH ONE OF THESE BARS ON THIS BAR
02:05:33 11 CHART; RIGHT?

02:05:33 12 A. YES. THOUGH IN HER REPORT, NOT -- SHE DISCUSSES THE FACT
02:05:41 13 THAT, YOU KNOW, SHE USES THE CISCO MARKET RESEARCH DOCUMENT IN
02:05:45 14 PART BECAUSE IT IS A DOCUMENT ABOUT CUSTOMER PREFERENCES AS
02:05:52 15 OPPOSED TO THESE OTHER DOCUMENTS WHICH ARE, LARGELY, LISTS.

02:05:55 16 Q. RIGHT.

02:05:55 17 BUT WHAT SHE EXPLAINS AND WHAT SHE SHOWS IN THIS CHART IS
02:05:59 18 SHE LOOKED AT A NUMBER OF DIFFERENT SOURCES WHICH HAD A NUMBER
02:06:03 19 OF DIFFERENT VALUES, THE AVERAGE WOULD HAVE BEEN 6 TO 7 PERCENT
02:06:06 20 OF SOFTWARE, AND WHAT SHE ACTUALLY TOOK WAS OF THE HIGHEST,
02:06:11 21 12.5 PERCENT; RIGHT?

02:06:12 22 A. SHE DID LOOK AT THESE OTHER THINGS THAT SHE DISCUSSED.

02:06:17 23 Q. RIGHT. FOR EXAMPLE, IF YOU LOOK AT THE RIGHT MOST BAR
02:06:20 24 CHART, RFP REQUIREMENTS, WHAT SHE DID THERE WAS SHE LOOKED AT
02:06:26 25 SOME RFP'S FROM CUSTOMERS, SHE COUNTED ALL THE SOFTWARE

02:06:30 1 REQUIREMENTS, SHE COUNTED HOW MANY OF THOSE ARE CLI REPORTED
02:06:32 2 AND TRIED TO MAKE SOME ALLOCATION THERE BETWEEN HOW MUCH OF THE
02:06:36 3 TOTALS SOFTWARE VALUE IS RELATED TO THE CLI; RIGHT?
02:06:40 4 A. THAT'S RIGHT. SHE USED 13 RFP'S THERE. AND SHE DID A
02:06:44 5 SIMPLE COUNTING EXERCISE OF LISTS.
02:06:47 6 Q. RIGHT. AND THAT RESULTED IN 2 TO 3 PERCENT; RIGHT,
02:06:51 7 INSTEAD OF 12.5 PERCENT?
02:06:53 8 A. YES. THE LIST OF FEATURES WERE LONG AND SHE GOT A SMALL
02:06:58 9 VALUE WITH THAT, YOU KNOW, NON-REPRESENTATIVE SAMPLE OF RFP'S.
02:07:02 10 Q. BUT IN ANY EVENT, WHAT SHE DID WAS SHE LOOKED AT SIX
02:07:06 11 DIFFERENT SOURCES TO TRY TO GET THIS, TO TRY TO MAKE THIS
02:07:09 12 ALLOCATION AND SHE PICKED THE ONE, OF ALL OF THEM, SHE PICKED
02:07:14 13 THE ONE THAT WAS THE MOST -- HIGHEST, MEANING THE MOST
02:07:17 14 FAVORABLE TO CISCO; RIGHT?
02:07:19 15 A. YOU KNOW, GIVEN THE DOCUMENTS THAT SHE SELECTED, THIS WAS
02:07:22 16 THE ONE THAT WAS THE HIGHEST.
02:07:24 17 Q. OKAY. AND YOU -- AND I THINK YOU JUST EXPLAINED THIS, YOU
02:07:29 18 MADE NO ATTEMPT TO ALLOCATE -- YOUR OWN ATTEMPT TO ALLOCATE THE
02:07:34 19 VALUE OF THE CLI TO THE ENTIRE SOFTWARE PACKAGE, OR FOR THAT
02:07:40 20 MATTER, TO THE ENTIRE SWITCH; RIGHT?
02:07:42 21 A. SO AGAIN, I PROVIDED A CORRECTION OF MS. ELSTEN'S
02:07:47 22 ANALYSIS. BUT I DIDN'T PROVIDE AN AFFIRMATIVE OPINION BECAUSE
02:07:51 23 MY UNDERSTANDING IS THAT IS NOT MY JOB, THAT IS HER BURDEN.
02:07:55 24 Q. RIGHT. AND YOU CERTAINLY COULD HAVE DONE IT TOO AND
02:07:59 25 PROVIDED AN ALTERNATE; RIGHT?

02:08:01 1 A. I PROVIDED A CORRECTION OF HERS THAT FIXED SOME OF THE
02:08:06 2 FLAWS, BUT YOU KNOW, IT WASN'T -- SHE IS SUPPOSED TO PROVIDE
02:08:11 3 IT.

02:08:12 4 Q. EVEN THAT CORRECTION THOUGH, ARE YOU SAYING THAT
02:08:14 5 CORRECTION IS AN APPROPRIATE ALLOCATION?

02:08:17 6 A. I AM NOT SAYING THAT THAT CORRECTION IS AN APPROPRIATE
02:08:19 7 ALLOCATION.

02:08:20 8 Q. THERE IS NO ALLOCATION AT ALL THAT YOU ARE OFFERING THAT
02:08:24 9 YOU ARE SAYING IS AN APPROPRIATE ALLOCATION; RIGHT?

02:08:27 10 A. I AM TO BE HELPFUL IN PROVIDING A CORRECTION, BUT IT IS
02:08:32 11 NOT MY OPINION THAT IT IS THE APPROPRIATE ALLOCATION.

02:08:35 12 Q. RIGHT. AND NOR HAVE YOU EVER OFFERED ANY OTHER ALLOCATION
02:08:38 13 THAT YOU SAY IS AN APPROPRIATE ALLOCATION; RIGHT?

02:08:41 14 A. RIGHT.

02:08:41 15 Q. WOULD YOU PLEASE LOOK AT EXHIBIT 5316 IN YOUR BINDER.
02:09:02 16 THAT'S THE CISCO POWERPOINT FROM 2014 ENTITLED BEAT ARISTA;
02:09:08 17 RIGHT?

02:09:08 18 A. YES.

02:09:08 19 Q. AND THIS IS ONE OF THE DOCUMENTS THAT YOU CONSIDERED IN
02:09:11 20 FORMING YOUR OPINIONS IN THE CASE; RIGHT?

02:09:12 21 A. RIGHT.

02:09:14 22 MR. SILBERT: YOUR HONOR, I OFFER 5316.

02:09:17 23 MR. PAK: NO OBJECTION.

02:09:17 24 THE COURT: IT WILL BE ADMITTED.

02:09:17 25 (DEFENDANT'S EXHIBIT 5316 WAS ADMITTED INTO EVIDENCE.)

02:09:20 1 BY MR. SILBERT:

02:09:20 2 Q. IF YOU LOOK AT SLIDE 7, PLEASE. THERE'S A HEADING, "WHY
02:09:27 3 WINNING AND LOSING AGAINST ARISTA..."

02:09:32 4 AND IF YOU LOOK DOWN TO THE "LOSING," IT'S GOT A NUMBER OF
02:09:39 5 CISCO -- IN THIS CISCO POWERPOINT, THERE ARE A NUMBER OF POINTS
02:09:43 6 HERE ABOUT WHY CISCO IS LOSING TO ARISTA.

02:09:45 7 ONE OF THEM IS FIRST TO MARKET WITH 40 GIGABIT; DO YOU SEE
02:09:49 8 THAT?

02:09:50 9 A. YES.

02:09:50 10 Q. AND THEN UNDER THAT, TWO DOWN, THERE'S "OPEN STANDARDS
02:09:55 11 BASED INNOVATION ON MODULAR SOFTWARE OPERATING
02:09:59 12 SYSTEM/PROGRAMMABILITY."

02:10:00 13 DO YOU SEE THAT?

02:10:01 14 A. YES.

02:10:02 15 Q. THERE'S TWO DOWN FROM THAT, "FOCUS ON BIG DATA AND
02:10:07 16 CLOUD-SIZE DATA CENTER NEEDS."

02:10:09 17 DO YOU SEE THAT?

02:10:10 18 A. YES.

02:10:11 19 Q. AND THEN BELOW THAT THERE'S "PRODUCT DIFFERENTIATION,
02:10:14 20 HIGHER PERFORMANCE AND DENSITY, LOWER LATENCY, POWER AND COST."

02:10:19 21 DO YOU SEE THAT?

02:10:19 22 A. YES.

02:10:20 23 Q. THOSE ARE ALL FEATURES THAT YOU WOULD AGREE HAVE VALUE TO
02:10:24 24 ARISTA'S CUSTOMERS; RIGHT?

02:10:25 25 A. YES.

02:10:26 1 Q. OKAY. THANKS. YOU CAN PUT THAT ASIDE.

02:10:31 2 YOU WERE IN COURT WHEN MR. VOLPI TESTIFIED; RIGHT, DO YOU
02:10:38 3 RECALL THAT, MICHAEL VOLPI?

02:10:40 4 A. ACTUALLY, I WASN'T IN COURT, BUT I DID READ THE
02:10:43 5 TRANSCRIPT.

02:10:43 6 Q. OKAY. THANK YOU.

02:10:44 7 AND YOU READ, THEREFORE, THAT MR. VOLPI WAS A HIGH RANKING
02:10:49 8 EXECUTIVE AT CISCO PREVIOUSLY; RIGHT?

02:10:51 9 A. YES.

02:10:52 10 Q. SHE WAS, FOR A TIME, THE SENIOR VICE PRESIDENT AND GENERAL
02:10:55 11 MANAGER IN CHARGE OF THE ETHERNET SWITCHING GROUP; RIGHT?

02:10:59 12 A. OKAY, YES.

02:11:00 13 Q. HE WAS ALSO, BEFORE THAT, CISCO'S CHIEF STRATEGY OFFICER;
02:11:04 14 RIGHT?

02:11:04 15 A. RIGHT.

02:11:05 16 Q. AND HE REPORTED TO JOHN CHAMBERS, WHO WAS THEN THE CEO OF
02:11:11 17 CISCO; RIGHT?

02:11:12 18 A. YES.

02:11:12 19 Q. AND YOU READ MR. VOLPI'S TESTIMONY THAT WHILE HE WAS A
02:11:15 20 CISCO EXECUTIVE, CISCO KNEW THAT OTHER SWITCH VENDORS USED
02:11:20 21 CLI'S THAT WERE "ALMOST IDENTICAL" TO CISCO'S; RIGHT?

02:11:24 22 A. YES. I KNOW THAT HE SAID THAT.

02:11:26 23 Q. OKAY. AND YOU ALSO KNOW THAT HE SAID THAT THE FACT THAT
02:11:29 24 OTHER VENDORS WERE USING CISCO'S CLI, REINFORCED CISCO'S MARKET
02:11:36 25 LEADERSHIP POSITION; RIGHT?

02:11:37 1 A. YES. NOW AGAIN, YOU KNOW, I DO NOT THINK HE WAS REFERRING
02:11:42 2 TO, NECESSARILY, INFRINGING CLI'S.

02:11:45 3 Q. HE WAS REFERRING TO ALMOST IDENTICAL CLI'S; RIGHT?

02:11:49 4 A. HE USED THAT LANGUAGE, OKAY.

02:11:51 5 Q. OKAY. YOU HEARD HIM SAY THAT THE FACT THAT OTHER VENDORS
02:11:55 6 WERE USING ALMOST IDENTICAL CLI'S ALLOWED CISCO TO PRESENT
02:11:59 7 ITSELF AS THE DE FACTO LEADER IN THE INDUSTRY; RIGHT?

02:12:03 8 A. YES, I DID SEE THAT.

02:12:05 9 Q. OKAY. AND YOU DON'T HAVE ANY BASIS TO DISPUTE ANY OF THAT
02:12:10 10 TESTIMONY BY MR. VOLPI, DO YOU?

02:12:12 11 A. I UNDERSTAND THAT THAT'S HIS OPINION, YEAH.

02:12:16 12 Q. OKAY. AND HIS OPINION, AND HE'S THE FORMER CHIEF STRATEGY
02:12:20 13 OFFICER FOR CISCO; RIGHT?

02:12:21 14 A. SO I -- I UNDERSTAND THAT -- YES.

02:12:25 15 Q. AND HE ALSO WAS FORMERLY IN CHARGE OF THE ETHERNET
02:12:30 16 SWITCHING GROUP AT CISCO; RIGHT?

02:12:32 17 A. RIGHT.

02:12:32 18 Q. OKAY. AND YOU ALSO WERE HERE OR READ THE TESTIMONY OF
02:12:37 19 MR. PHILLIP REMAKER; RIGHT?

02:12:38 20 A. YES.

02:12:39 21 Q. AND HE CURRENTLY WORKS FOR CISCO; RIGHT?

02:12:43 22 A. RIGHT.

02:12:43 23 Q. AND HE SAID --

02:12:51 24 MR. SILBERT: AND ACTUALLY, JEFF, DO YOU MIND PUTTING
02:12:55 25 ON THE SCREEN 699, LINES 21 THROUGH 25.

02:12:59 1 Q. AND HE WAS ASKED THE QUESTION?

02:13:01 2 "QUESTION: CISCO WAS HAPPY WITH THE CLI COMMANDS
02:13:03 3 BEING A DE FACTO INDUSTRY STANDARD BECAUSE THAT WAS CONSISTENT
02:13:08 4 WITH THE CULTURE OF MAKING CUSTOMERS SUCCESSFUL?

02:13:12 5 "ANSWER: YES, A CONSISTENT CLI MAKES OUR CUSTOMERS
02:13:15 6 SUCCESSFUL."

02:13:17 7 YOU SAW THAT TESTIMONY; RIGHT?

02:13:19 8 A. YES.

02:13:19 9 Q. YOU DON'T HAVE ANY REASON TO DISPUTE THAT TESTIMONY, DO
02:13:23 10 YOU?

02:13:23 11 A. I HAVE NO REASON TO DISPUTE HIS OPINION, THAT THAT'S HIS
02:13:27 12 OPINION.

02:13:27 13 MR. VAN NEST: THANKS. I HAVE NOTHING FURTHER.

02:13:30 14 THE COURT: THANK YOU.

02:13:30 15 REDIRECT?

02:13:31 16 MR. PAK: YES.

02:13:35 17 **REDIRECT EXAMINATION**

02:13:36 18 BY MR. PAK:

02:13:37 19 Q. SO DR. CHEVALIER, NOW WE JUST HEARD ABOUT SOME TESTIMONY
02:13:41 20 FROM MR. VOLPI; DO YOU RECALL HIS NAME?

02:13:42 21 A. YES.

02:13:43 22 Q. YOU DO REMEMBER THAT HE ALSO TESTIFIED THAT HE DIDN'T HAVE
02:13:46 23 ANY PERSONAL KNOWLEDGE OF THE CLI COMMANDS AT ISSUE IN THIS
02:13:49 24 CASE, CORRECT?

02:13:49 25 A. YES, I DO REMEMBER THAT.

02:13:51 1 Q. AND HE ALSO TESTIFIED THAT HE WAS AN INVESTOR IN ARISTA
02:13:57 2 THROUGH HIS VENTURE CAPITAL FUND?

02:13:59 3 A. OH, YES, I DO REMEMBER THAT.

02:14:00 4 Q. NOW I WANT TO LOOK AT SOME VERY SPECIFIC THINGS THAT YOU
02:14:03 5 CONSIDERED. TAKE A LOOK AT SLIDE 27 IN YOUR PRESENTATION DECK.
02:14:17 6 IT'S THE TESTIMONY OF MR. DUDA.

02:14:22 7 SO AGAIN, THE JURORS HAVE SEEN THIS. YOU HAVE CONSIDERED
02:14:25 8 MR. DUDA'S DEPOSITION TESTIMONY, CORRECT.

02:14:28 9 A. CORRECT.

02:14:28 10 Q. SO WHAT HE SAYS IS, "SOME CUSTOMERS HAVE MADE HEAVY
02:14:32 11 INVESTMENTS IN TOOLING AND AUTOMATION AROUND THE INDUSTRY
02:14:35 12 STANDARD COMMAND SET WHICH LARGELY OVERLAPS CISCO. IF WE,
02:14:40 13 THAT'S ARISTA, "WEREN'T ABLE TO USE ANY OF THOSE COMMANDS FOR
02:14:42 14 THAT TYPE OF CUSTOMER, IT WOULD BE A LARGER IMPEDIMENT."

02:14:46 15 DO YOU SEE THAT TESTIMONY?

02:14:47 16 A. I DO.

02:14:48 17 Q. AND IS THAT CONSISTENT WITH YOUR VIEW THAT AUTOMATION
02:14:51 18 CUSTOMERS, HIGHLY AUTOMATED CUSTOMERS, STILL VALUE THE CISCO
02:14:55 19 CLI?

02:14:55 20 A. YES. YOU KNOW, THESE TOOLS, THIS AUTOMATION IS WHAT THE
02:15:01 21 HIGHLY AUTOMATED CUSTOMERS USE, YEAH.

02:15:03 22 Q. AND LET'S TAKE A LOOK AT ANOTHER ONE. SLIDE 31.

02:15:07 23 AND THIS TIME WE ARE GOING TO SEE TESTIMONY FROM
02:15:10 24 MR. SADANA, THE CHIEF CUSTOMER OFFICER. HE WAS ASKED IN HIS
02:15:13 25 DEPOSITION -- AGAIN, YOU CONSIDERED HIS DEPOSITION, CORRECT IN?

02:15:16 1 A. I DID.

02:15:17 2 Q. BASED ON YOUR EXPERIENCE OF WORKING WITH ARISTA'S
02:15:19 3 CUSTOMERS, WAS HAVING AN IOS-LIKE CLI AN IMPORTANT FACTOR IN
02:15:23 4 THE CUSTOMER'S DECISION TO BUY ARISTA'S SWITCHES?

02:15:26 5 "ANSWER: THE CLI WAS A CHECK MARK. YOU NEEDED IT TO
02:15:30 6 GET TO THE NEXT STAGE OF YOUR DISCUSSION, TO HAVE THE CUSTOMER
02:15:33 7 EVALUATE IT AND TO PURCHASE YOUR PRODUCT."

02:15:36 8 IS THAT TESTIMONY CONSISTENT WITH YOUR BUT-FOR OPINIONS IN
02:15:40 9 THIS CASE?

02:15:40 10 A. YES, IT IS.

02:15:42 11 SO AGAIN, HE'S DESCRIBING KIND OF A TWO-STAGE PROCESS LIKE
02:15:47 12 I DESCRIBED WITH THE CAR. THE CLI, YOU NEED -- YOU KNOW, IT
02:15:50 13 WAS HIS OPINION THAT YOU NEEDED THE CLI TO GET TO THE NEXT
02:15:53 14 STAGE OF DISCUSSION.

02:15:54 15 Q. OKAY. AND THEN LASTLY, IF WE LOOK BACK AT YOUR SLIDE 2,
02:15:59 16 WHICH IS THE MARKET SHARE SLIDE, JUST TO BE CLEAR, IF SOME OF
02:16:08 17 THE CUSTOMERS WANTED TO BUY JUNIPER EQUIPMENT BECAUSE THEY LIKE
02:16:12 18 THE JUNIPER CLI, IN YOUR BUT-FOR ANALYSIS, DO YOU TAKE INTO
02:16:16 19 ACCOUNT THE FACT THAT SOME OF ARISTA'S SALES WOULD HAVE GONE TO
02:16:20 20 JUNIPER?

02:16:20 21 A. OH, YEAH, ABSOLUTELY. YES. AGAIN, SOME OF ARISTA SALES,
02:16:24 22 THOSE BLUE ARROWS, YOU KNOW, ARE, YOU COULD SEE THERE'S AN
02:16:28 23 ARROW GOING RIGHT OVER TO THE JUNIPER BOX, YES, EXACTLY.

02:16:31 24 Q. SO INSTEAD OF A RED CAR, IF THEY WANTED A BLUE CAR AND
02:16:34 25 THEY WANTED TO GO TO JUNIPER, THAT'S STILL REFLECTED IN THE

02:16:37 1

MODEL?

02:16:37 2

A. YES.

02:16:38 3

MR. PAK: THANK YOU, YOUR HONOR.

02:16:38 4

THAT'S ALL THE QUESTIONS I HAVE.

02:16:39 5

THE COURT: ANYTHING ELSE, MR. SILBERT?

02:16:42 6

MR. SILBERT: NO, YOUR HONOR.

02:16:43 7

THANK YOU.

02:16:43 8

THE COURT: DR. CHEVALIER, THANK YOU FOR YOUR

02:16:48 9

TESTIMONY. YOU MAY STEP DOWN.

02:16:51 10

LET'S SEE, MR. NELSON, YOUR NEXT WITNESS?

02:16:54 11

MR. NELSON: ACTUALLY, WE ARE DONE WITH WITNESSES AND

02:16:57 12

THE REBUTTAL.

02:16:58 13

I JUST HAVE A VERY BRIEF ISSUE TO DISCUSS AT SIDEBAR.

02:17:01 14

THE COURT: OKAY. SURE. OF COURSE.

02:17:02 15

MR. NELSON: OKAY. THANK YOU.

02:17:17 16

(SIDEBAR DISCUSSION ON THE RECORD.)

02:17:26 17

MR. NELSON: YOUR HONOR, THIS IS JUST -- I'M NOT

02:17:29 18

GOING BACK TO THE WELL ON THE INDUSTRY STANDARD CURATIVE

02:17:34 19

INSTRUCTION, BUT I'M TOLD I NEED TO, YOU KNOW, WE TALKED ABOUT

02:17:37 20

IT IN CHAMBERS YESTERDAY, AND YOUR HONOR WASN'T GOING TO

02:17:40 21

DELIVER IT, SO I JUST WANT TO MAKE THE RECORD ON THAT

02:17:42 22

YOUR HONOR.

02:17:43 23

IN LIGHT OF SOME OF THE CONFUSION WE DISCUSSED YESTERDAY

02:17:45 24

WITH THE INDUSTRY STANDARD TERMINOLOGY BEING USED AS PART OF

02:17:50 25

THE ORIGINAL CREATIVITY DEFENSE, AS WELL AS SOME OF THE LOOSE

02:17:54 1 TERMINOLOGY, WE BELIEVE THERE'S SIGNIFICANT CONFUSION ON THAT
02:17:57 2 AS WELL AS, I THINK, PERHAPS IN VIOLATION OF YOUR HONOR'S IN
02:18:03 3 LIMINE ORDER. THERE ARE WITNESSES THAT HAVE ACTUALLY TESTIFIED
02:18:05 4 YES, THIS WAS AN INDUSTRY STANDARD AS WELL.

02:18:07 5 SO THE INSTRUCTION THAT WE WOULD PROPOSE IS, "YOU HAD
02:18:13 6 HEARD SOME WITNESSES USE THE TERM "INDUSTRY STANDARD" IN AN
02:18:18 7 INFORMAL WAY TO MEAN THAT SOMETHING HAS BECOME POPULAR IN AN
02:18:23 8 INDUSTRY AFTER THE TIME IT WAS CREATED. I WANT TO MAKE CLEAR
02:18:26 9 TO YOU THAT A COPYRIGHT OWNER DOES NOT LOSE COPYRIGHT
02:18:29 10 PROTECTION IN AN ORIGINAL WORK SOLELY BECAUSE IT LATER BECOMES
02:18:33 11 POPULAR IN AN INDUSTRY."

02:18:34 12 THE COURT: OKAY. WELL, I'VE ALREADY DENIED THAT.
02:18:36 13 AND I THINK THAT THAT IS APPROPRIATE CLOSING ARGUMENT IF YOU
02:18:40 14 WANT.

02:18:40 15 I DON'T HAVE ANY RESTRICTION ON THAT, THAT I CAN TELL FROM
02:18:43 16 WHAT YOU'VE READ, BUT I DON'T THINK THAT NEEDS TO COME FROM ME.

02:18:46 17 ALL RIGHT.

02:18:47 18 MR. VAN NEST: THANK YOU, YOUR HONOR.

02:18:48 19 THE COURT: AND YOU HAVE NO MORE WITNESSES?

02:18:50 20 MR. NELSON: NO, I DON'T.

02:18:51 21 THE COURT: GOOD. YOU HAVE --

02:18:52 22 MR. VAN NEST: YES, WE DO.

02:19:06 23 THE COURT: ALL RIGHT. WE ARE GOING TO GO ABOUT
02:19:08 24 ANOTHER 15 MINUTES BEFORE WE TAKE A BREAK.

02:19:11 25 SO MR. NELSON, DO YOU HAVE ANYMORE WITNESSES?

02:19:13 1 MR. NELSON: NO, WE DO NOT. THAT IS IT FOR THE
02:19:15 2 REBUTTAL CASE.

02:19:16 3 THE COURT: ALL RIGHT.

02:19:16 4 MR. VAN NEST, DO YOU HAVE A REBUTTAL CASE FOR ARISTA?

02:19:18 5 MR. VAN NEST: WE DO, YOUR HONOR.

02:19:21 6 AND MR. FERRALL WILL BE CALLING DR. BLACK.

02:19:22 7 THE COURT: ALL RIGHT. IF YOU DON'T MIND,
02:19:24 8 MR. FERRALL, JUST GETTING US STARTED, THEN WE WILL BREAK IN
02:19:27 9 ABOUT 15 MINUTES.

02:19:29 10 MR. FERRALL: OKAY. SURE.

02:19:30 11 THE COURT: DR. BLACK, IF YOU WOULD COME BACK TO THE
02:19:32 12 WITNESS STAND, PLEASE AND STAND TO BE SWORN.

02:19:35 13 **(DEFENDANT'S WITNESS, DR. BLACK, WAS SWORN.)**

02:19:36 14 THE WITNESS: YES.

02:20:05 15 **DIRECT EXAMINATION IN REBUTTAL**

02:20:06 16 BY MR. FERRALL:

02:20:07 17 Q. GOOD AFTERNOON, DR. BLACK.

02:20:09 18 A. GOOD AFTERNOON.

02:20:10 19 Q. WELCOME BACK.

02:20:12 20 A. THANK YOU.

02:20:13 21 Q. YOU'VE BEEN LISTENING TO MOST OF THE PROCEEDINGS SINCE YOU
02:20:16 22 HAVE BEEN ON THE STAND LAST; RIGHT?

02:20:18 23 A. I HAVE.

02:20:19 24 Q. AND IF WE COULD JUST PULL UP SLIDE 25 FROM DR. BLACK'S
02:20:25 25 DEMONSTRATIVES.

02:20:29 1 AND DR. BLACK, WHAT I WOULD LIKE TO DO VERY BRIEFLY IS
02:20:33 2 JUST TALK ABOUT A COUPLE OF THE FAIR USE FACTORS THAT YOU
02:20:36 3 CONSIDERED TO RESPOND TO DR. ALMEROTH, OKAY?

02:20:40 4 A. OKAY.

02:20:40 5 Q. AND THE FIRST ONE I WANT TO ASK YOU ABOUT IS THE PURPOSE
02:20:43 6 AND CHARACTER OF THE USE.

02:20:46 7 DID YOU HEAR DR. ALMEROTH'S TESTIMONY ABOUT YOUR OPINION
02:20:51 8 REGARDING WHETHER ARISTA'S USE WAS TRANSFORMATIVE?

02:20:55 9 A. I DID.

02:20:55 10 Q. AND DOES THE FACT, DR. BLACK, THAT ARISTA USED SIMILAR CLI
02:21:03 11 COMMANDS AT CISCO, ANSWER THE QUESTION IN YOUR MIND, ABOUT
02:21:07 12 WHETHER ARISTA'S USE WAS TRANSFORMATIVE?

02:21:10 13 A. NO, I DON'T BELIEVE IT DOES.

02:21:12 14 Q. WHY DO YOU SAY THAT?

02:21:13 15 A. WELL, I MEAN, FIRST OF ALL, LET'S REMEMBER THAT WE ARE
02:21:16 16 TALKING ABOUT A SMALL PORTION OF CISCO'S FULL COMMAND SET,
02:21:21 17 SOMETHING LIKE 441 OUT OF 16,000 OR YOU COULD MAYBE ARGUE
02:21:27 18 12,000. SO IT'S A SMALL FRACTION TO BEGIN WITH.

02:21:29 19 BUT THEN ALSO, THE PURPOSE AND CHARACTER OF THE USE GOES
02:21:33 20 TO THE IDEA THAT, WELL, REMEMBER I SAID LIKE CLI COMMANDS ARE
02:21:38 21 LIKE KNOBS ON THE FRONT OF A STEREO, AND YOU MAY HAVE A 1950'S
02:21:43 22 STEREO, AND YOU MAY HAVE A 2016 STEREO. AND THE KNOBS MAY LOOK
02:21:46 23 THE SAME, THEY MAYBE EVEN HAVE THE SAME LABEL LIKE "VOLUME" AND
02:21:52 24 "TUNING," BUT WHAT HAPPENS INSIDE TRULY MATTERS.

02:21:54 25 Q. AND IF WE COULD LOOK AT EXHIBIT 7357, PLEASE, I THINK

02:22:01 1 THAT'S ALREADY IN EVIDENCE.

02:22:04 2 A. OKAY.

02:22:05 3 Q. IS THIS A DOCUMENT THAT YOU CONSIDERED IN INVESTIGATING
02:22:13 4 WHETHER ARISTA'S USE OF CLI COMMANDS IS TRANSFORMATIVE?

02:22:17 5 A. YES.

02:22:18 6 Q. I THINK WE HEARD SOME TESTIMONY TO THE EFFECT, FROM
02:22:27 7 DR. ALMEROTH, THAT ARISTA DIDN'T DO ANYTHING DIFFERENT WITH THE
02:22:32 8 CLI COMMANDS; DID YOU HEAR SOMETHING TO THAT EFFECT?

02:22:36 9 A. I BELIEVE SO, YES.

02:22:37 10 Q. AND DO YOU AGREE WITH THAT?

02:22:40 11 A. NO, I DON'T.

02:22:42 12 Q. CAN YOU EXPLAIN WHAT YOU HAVE IN MIND?

02:22:43 13 A. SURE. SO I MEAN, WE HEARD LOTS OF TESTIMONY FROM
02:22:48 14 MR. SADANA, IN FACT TODAY, THAT WHILE THERE ARE SOME CUSTOMERS
02:22:52 15 WHO STILL TYPE THESE THINGS IN, ESPECIALLY ENTERPRISE
02:22:56 16 CUSTOMERS, THE MORE AUTOMATED CUSTOMERS, CLOUD CUSTOMERS, AND
02:23:01 17 THE BIGGER LARGER CUSTOMERS, THEY WANT TO USE THE CLI IN A
02:23:05 18 DIFFERENT WAY. THEY WANT TO USE A PROGRAMATIC APPROACH WHERE
02:23:09 19 THERE'S A PROGRAM THAT DYNAMICALLY DECIDES ON WHICH COMMANDS TO
02:23:14 20 ISSUE, AND DOES THAT VIA A DIFFERENT MECHANISM.

02:23:17 21 SO MAYBE THE CLI COMMANDS LOOK THE SAME WAY AS THEY DID
02:23:21 22 WHEN YOU TYPED THEM, BUT WHEN YOU ARE USING A COMPUTER TO ISSUE
02:23:25 23 THEM, IT DOESN'T MATTER REALLY WHAT THEY ARE ANYMORE.

02:23:29 24 MR. FERRALL: SO IF WE COULD LOOK, MR. DAHM, AT THE
02:23:32 25 PAGE ENDING IN 953 OF THIS EXHIBIT. AND IF YOU COULD BLOW UP

02:23:39 1 THE TOP TWO PARAGRAPHS, PLEASE.

02:23:41 2 Q. DR. BLACK, CAN YOU TELL THE JURY A LITTLE BIT WHAT THIS
02:23:48 3 PORTION OF EXHIBIT 7357 TELLS YOU ABOUT THE WAY ARISTA USES THE
02:23:54 4 CLI?

02:23:55 5 A. YEAH, THIS IS HIGHLIGHTING SOME OF THE FEATURES THAT
02:23:58 6 ARISTA HAS BUILT INTO ITS PRODUCT TO ALLOW THE KINDS OF USES I
02:24:04 7 WAS JUST DESCRIBING.

02:24:05 8 IT HAS NEW EAPI, I THINK I TALKED ABOUT TWO DAYS AGO, THIS
02:24:11 9 ALLOWS CLI COMMANDS TO BE ISSUED THROUGH WHAT'S CALLED A JSON
02:24:16 10 INTERFACE. THE ZTP FEATURE -- THAT'S NOT HERE.

02:24:18 11 THE EOS SEK, THAT'S YOUR SOFTWARE DEVELOPMENT KIT. THAT'S
02:24:23 12 WHAT ALLOWS YOU TO ADD NEW CLI COMMANDS OR CHANGE THE EXISTING
02:24:26 13 BEHAVIOR OF VARIOUS CLI COMMANDS. YOU CAN WRITE YOUR OWN
02:24:31 14 PYTHON AND PERL SCRIPTS, AND YOU CAN USE WHAT'S CALLED
02:24:37 15 "OPENFLOW" WHICH IS AN SDN TECHNOLOGY.

02:24:39 16 SO THERE ARE MANY WAYS THAT THEY SORT OF TRANSFORMED THE
02:24:42 17 WAY THAT CLI IS USED.

02:24:43 18 Q. I WANT TO TAKE A MOMENT AND FOCUS ON EAPI, WHICH IS
02:24:48 19 SOMETHING THAT WE'VE HEARD ABOUT THROUGHOUT THE TRIAL.

02:24:50 20 MR. FERRALL: AND WITH THE COURT'S PERMISSION,
02:24:52 21 YOUR HONOR, I WOULD LIKE DR. BLACK TO SHOW ON THE WHITE BOARD
02:24:55 22 OR THE PAPER THERE, HOW EAPI WORKS WITH CLI COMMANDS.

02:25:00 23 THE COURT: GO AHEAD.

02:25:11 24 THE WITNESS: OKAY. SO NOW I FEEL LIKE I'M BACK AT
02:25:20 25 HOME TEACHING COMPUTER SCIENCE AGAIN.

02:25:22 1 SO THE IDEA IS THAT INSTEAD OF TYPING THE COMMANDS IN, AND
02:25:26 2 YOU ARE GOING TO HAVE A COMPUTER, AND THAT'S MY BEST I CAN DO.
02:25:34 3 THAT'S MY COMPUTER. AND IT'S GOING TO AUTOMATICALLY ISSUE A
02:25:36 4 CLI THROUGH WHAT'S CALLED THIS EAPI.

02:25:41 5 AND FOR ARISTA, WHAT YOU HAVE TO DO -- I'VE GOT A CHEAT
02:25:45 6 SHEET HERE -- IS YOU HAVE SEND IT IN WHAT'S CALLED JSON FORMAT.
02:25:50 7 JAVA SCRIPT OBJECT NOTATION, IS WHAT IT STANDS FOR.

02:25:52 8 AND IT LOOKS A LITTLE BIT LIKE THIS, I WON'T DRAW EVERY
02:25:56 9 DETAIL BECAUSE IT WOULD TAKE US WAY TOO LONG, BUT YOU SEND
02:25:59 10 THESE CHARACTERS -- YOU DON'T, THE COMPUTER SENDS THESE
02:26:02 11 CHARACTERS.

02:26:02 12 SO JSON RPC. 2.0 IS TELLING YOU THE VERSION NUMBER. THERE
02:26:11 13 ARE A FEW OTHER THINGS YOU HAVE TO DO. I WON'T WRITE THOSE.

02:26:19 14 PARAMS, THAT STANDS FOR PARAMETERS.

02:26:23 15 AND THEN YOU GIVE IT THE CLI COMMANDS RIGHT HERE. CALLING
02:26:26 16 IT CMDS. AND YOU MIGHT DO SOMETHING LIKE "SHOW CLOCK."

02:26:34 17 AND IF THAT LOOKS FAMILIAR, IT'S BECAUSE WE HAVE BEEN
02:26:37 18 TALKING ABOUT THAT AS ONE OF THE 506. THAT'S A CLI COMMAND.
02:26:40 19 YOU COULD GIVE MORE, YOU COULD SAY "COMMA," AND ISSUE MORE ALL
02:26:43 20 AT THE SAME TIME.

02:26:44 21 I WILL JUST STOP THERE. AND SINCE COMPUTERS ARE FINICKY,
02:26:47 22 YOU HAVE TO CLOSE THE BRACES. SO YOU WOULDN'T WANT TO TYPE ALL
02:26:51 23 OF THIS IN MANUALLY, BUT YOU DON'T HAVE TO BECAUSE THIS IS THE
02:26:54 24 COMPUTER GENERATING IT AND PACKAGING IT AS JSON.

02:26:58 25 THAT GETS SENT OVER THE NETWORK, OFTEN THE NETWORK IS

02:27:01 1 LOCAL, TO THE ARISTA SWITCH, THIS IS AN ARISTA SWITCH.

02:27:12 2 THE SWITCH RECEIVES THIS PACKAGE, THIS JSON, UNWRAPS IT,
02:27:16 3 PULLS OUT THE SHOW CLOCK, EXECUTES IT, GENERATES THE RESPONSE
02:27:21 4 WHICH ALSO LOOKS LIKE THIS, BUT I'M NOT GOING TO DRAW IT
02:27:24 5 BECAUSE IT WOULD BE A LOT MORE BRACES AND SO FORTH.

02:27:28 6 BUT THE JSON RESPONSE IS GOING TO COME BACK WITH THE DATE,
02:27:32 7 AND THE TIME, THAT'S WHAT THE "SHOW CLOCK" DOES, AND SEND IT
02:27:36 8 BACK TO THE COMPUTER WHO IS WAITING FOR A RESPONSE.

02:27:38 9 AND THE NICE THING ABOUT THIS IS THAT YOU CAN ISSUE CLI
02:27:43 10 COMMANDS, GET BACK RESPONSES, AND THEN DYNAMICALLY DECIDE WHAT
02:27:46 11 YOU ARE GOING TO DO NEXT AS A RESULT.

02:27:49 12 MAYBE YOU ARE GOING TO CHANGE THE CONFIGURATION OF THE
02:27:51 13 SCRIPT OF THE SWITCH, MAYBE YOU ARE GOING TO CALL AN OPERATOR
02:27:55 14 AND SAY SOMETHING IS WRONG, SOMEBODY NEEDS TO LOOK AT THIS.

02:27:58 15 AND SINCE THIS IS A COMPUTER ISSUING ALL OF THESE
02:28:01 16 COMMANDS, YOU CAN DO THIS SIMULTANEOUSLY TO THOUSANDS OF
02:28:04 17 DIFFERENT SWITCHES IN A SECOND.

02:28:06 18 SO THIS JUST CHANGES THE WAY THAT WE USE THE CLI, IT'S NOT
02:28:12 19 BEING TYPED IN BY ONE PERSON GOING AROUND, IT'S BEING AUTOMATED
02:28:16 20 COMPLETELY.

02:28:17 21 Q. THANK YOU.

02:28:23 22 LET ME ASK ONE MORE QUESTION ON THIS REGARDING MODES.

02:28:28 23 DOES ARISTA USE THE MODES IN A TRANSFORMATIVE OR A
02:28:38 24 DIFFERENT WAY THAN THE MODES ARE USED IN CISCO'S CLI?

02:28:43 25 A. I MEAN, THE FOUR ACCUSED MODES HAVE A DIFFERENT SET OF CLI

02:28:49 1 COMMANDS AVAILABLE IN THEM THAN ARE AVAILABLE IN THE VARIOUS
02:28:52 2 CISCO PRODUCTS.

02:28:54 3 ARISTA HAS ADDED, IT'S IN MY REPORT, BUT IT'S 60 OR 70
02:29:00 4 OTHER MODES ON TOP OF THAT THAT ARE DIFFERENT FROM THE CISCO
02:29:04 5 MODES. SO IN THAT SENSE, YES.

02:29:06 6 Q. OKAY.

02:29:07 7 MR. FERRALL: YOUR HONOR, THIS MIGHT BE A BREAKING
02:29:10 8 POINT FOR MY EXAMINATION.

02:29:12 9 THE COURT: THAT WOULD BE GREAT. THANK YOU FOR
02:29:13 10 LETTING ME KNOW.

02:29:14 11 ALL RIGHT. WE ARE GOING TO TAKE OUR AFTERNOON BREAK,
02:29:19 12 LET'S COME BACK IN 15 MINUTES.

02:29:26 13 (RECESS FROM 2:29 P.M. UNTIL 2:45 P.M.)

02:45:33 14 THE COURT: PLEASE BE SEATED, EVERYONE. ALL OF OUR
02:46:36 15 JURORS ARE HERE.

02:46:37 16 AND LET'S SEE, MR. FERRALL, I CUT YOU OFF BEFORE OUR
02:46:43 17 BREAK, SO YOU MAY CONTINUE.

02:46:45 18 MR. FERRALL: THANK YOU.

02:46:47 19 Q. OKAY. DR. BLACK, I WANT TO TURN TO ANOTHER TOPIC UNDER
02:46:59 20 THE FAIR USE CATEGORY, AND THAT WAS SOME OF THE TESTIMONY YOU
02:47:03 21 GAVE REGARDING THE USAGE OF THESE CLI ELEMENTS BY OTHER VENDORS
02:47:09 22 IN THE INDUSTRY. YOU WERE HERE DURING DR. ALMEROOTH'S CRITICISM
02:47:16 23 OF YOUR TESTIMONY IN THAT REGARD?

02:47:17 24 A. I WAS HERE.

02:47:18 25 Q. AND THE FIRST QUESTION I WANT TO ASK YOU IS, YOU

02:47:21 1 UNDERSTAND THAT THE ASSERTION BY CISCO WITH REGARD TO CLI
02:47:24 2 COMMANDS IS AS TO THE COMPILATION OF COMMANDS IN THE CISCO USER
02:47:31 3 INTERFACE?

02:47:31 4 A. THAT'S MY UNDERSTANDING, YES.

02:47:34 5 Q. AND CISCO HAS NOT ASSERTED THAT ARISTA IS USING THE ENTIRE
02:47:38 6 COMPILATION OF COMMANDS; RIGHT?

02:47:40 7 A. NO.

02:47:41 8 Q. YOU TESTIFIED ABOUT THAT A MOMENT AGO A LITTLE BIT.
02:47:44 9 OF THE 506 ASSERTED COMMANDS, IS THERE ANY PATTERN YOU
02:47:49 10 FOUND AMONG THOSE?

02:47:51 11 A. I MEAN, YOU CAN LOOK THROUGH THE LIST OF 506 AND I CAN'T
02:47:57 12 DISCERN ANY MEANINGFUL PATTERN, IT'S MORE OR LESS AN ARBITRARY
02:48:02 13 LIST FROM WHAT I CAN SEE, OTHER THAN PERHAPS THEY SHARE A
02:48:07 14 COMMONALITY WITH ARISTA.

02:48:08 15 Q. DO THEY REPRESENT SOME DISCREET SET OF FUNCTIONS OR
02:48:12 16 FEATURES OF A SWITCH?

02:48:14 17 A. NOT THAT I CAN DISCERN, NO.

02:48:22 18 Q. IN LIGHT OF THAT, IF WE CAN GO BACK TO YOUR INVESTIGATION
02:48:26 19 AND REMIND THE JURY WHAT YOU WERE DOING WHEN YOU STARTED
02:48:28 20 LOOKING AT OTHER VENDOR'S USAGE OF COMMANDS?

02:48:31 21 A. SURE.

02:48:31 22 SO I MEAN, WHEN I FIRST HEARD OF THIS LAWSUIT, I THOUGHT
02:48:35 23 WOW, I'M SURPRISED, YOU KNOW, I KNOW A LOT OF OTHER VENDORS USE
02:48:39 24 A CLI SIMILAR TO CISCO, IT'S FAIRLY WIDESPREAD. THEN I WAS
02:48:44 25 ASKED TO ACTUALLY TAKE A CLOSER LOOK AT THIS QUESTION AND

02:48:47 1 CONDUCT AN ANALYSIS.

02:48:48 2 AND MY FIRST INSTINCT WAS TO SAY, LET'S LOOK AT EVERYTHING
02:48:53 3 OFFERED BY CISCO ACROSS ITS PRODUCTS AND ALL THE CLI COMMANDS
02:48:57 4 SUPPORTED BY EACH OF THESE OTHER VENDORS.

02:49:00 5 AND THAT WAS THE QUESTION I HAD HOPED TO ANSWER.

02:49:02 6 Q. AND DID YOU ANSWER THAT FOR ANY VENDOR?

02:49:05 7 A. JUST DELL, AS I EXPLAINED, OR TRIED TO EXPLAIN ON
02:49:09 8 WEDNESDAY.

02:49:09 9 Q. OKAY. AND IF WE COULD LOOK AT EXHIBIT 9049, PLEASE.
02:49:18 10 THESE ARE THE RESULTS YOU FOUND FOR DELL; RIGHT?

02:49:21 11 A. CORRECT.

02:49:21 12 Q. AND WERE THERE -- IN FINDING THESE RESULTS FOR DELL, DID
02:49:29 13 YOU COUNT ANY INCOMPLETE OR PARTIAL DELL COMMANDS?

02:49:34 14 A. NO, THESE ARE FULL, VALID ISSUABLE COMMANDS.

02:49:39 15 Q. AND I THINK YOU EXPLAINED YOU WERE NOT ABLE TO DO THE SAME
02:49:46 16 THING FOR OTHER VENDORS; RIGHT?

02:49:48 17 A. FOR LACK OF TIME, YES.

02:49:49 18 Q. OKAY. AND WHAT DID YOU DO FOR THE OTHER VENDORS INSTEAD?

02:49:53 19 A. IN THE CASES OF 17 OTHERS, ACTUALLY I DID IT FOR DELL AS
02:49:59 20 WELL.

02:49:59 21 SO FOR 18 VENDORS, I RESTRICTED MY COMPARISON TO JUST THE
02:50:05 22 506 THAT WERE ACCUSED IN THIS LAWSUIT TO SEE IF I COULD FIND
02:50:11 23 THEM IN THE USER MANUALS FOR THOSE 18.

02:50:20 24 Q. NOW DR. ALMEROTH, I THINK, CRITIQUED YOU FOR NOT FINDING
02:50:23 25 THAT OTHER COMPANIES USE MORE THAN A FEW HUNDRED OUT OF THE 506

02:50:23 1 COMMANDS.

02:50:28 2 AND IN YOUR VIEW, IS THAT A FAIR CRITICISM?

02:50:31 3 A. I DON'T THINK IT'S FAIR. I THINK THAT, YOU KNOW, IT'S --
02:50:34 4 IT'S PART OF WHAT HAS TO HAPPEN BECAUSE OF THE WAY I DID MY
02:50:37 5 ANALYSIS IN A CONSERVATIVE WAY.

02:50:39 6 Q. WELL, I WOULD LIKE YOU TO EXPLAIN THAT MORE TO THE JURY
02:50:43 7 ABOUT THE WAY YOU DID YOUR ANALYSIS.

02:50:45 8 AND YOU SAID IN A CONSERVATIVE WAY. WHAT DO YOU MEAN BY
02:50:51 9 THAT? HOW WAS YOUR ANALYSIS CONSERVATIVE WHEN YOU ARE LIMITING
02:50:55 10 IT TO THE 506?

02:50:56 11 A. RIGHT. SO HERE'S AN ANALOGY YOU MIGHT THINK OF:

02:51:00 12 SUPPOSE YOU ARE STANDING IN A GROCERY STORE AND THERE ARE
02:51:02 13 THOUSANDS OF ITEMS IN A GROCERY STORE, AND YOU WANT TO KNOW
02:51:06 14 WHAT ITEMS IN COMMON DOES THIS STORE HAVE WITH THE ONE ACROSS
02:51:10 15 THE STREET.

02:51:10 16 AND WHAT YOU WOULD LIKE TO DO, OF COURSE, IS COMPARE EVERY
02:51:14 17 SINGLE ITEM IN THE FIRST STORE TO EVERY SINGLE ITEM IN THE
02:51:17 18 SECOND STORE. BUT THAT'S PRETTY HARD, YOU WOULD HAVE TO DO A
02:51:21 19 LOT OF WORK TO GET THERE.

02:51:22 20 SO INSTEAD, WHAT I DID IS ESSENTIALLY, LIKE, IF YOU HAD A
02:51:26 21 GROCERY LIST AND IT ONLY HAD 20 ITEMS, IT HAD TWO FROZEN FOODS
02:51:30 22 AND ONE MILK, AND ONE CHEESE, AND SO FORTH, KIND OF A MISHMASH
02:51:35 23 SELECTION OF DIFFERENT ITEMS IN THE STORE, AND THEN YOU GO
02:51:38 24 ACROSS THE STREET AND YOU TRY TO FIND JUST THOSE 20.

02:51:43 25 HOW MANY ARE YOU GOING TO FIND? YOU MIGHT FIND 10 OR 15

02:51:47 1 OR 20, BUT YOU CERTAINLY WON'T FIND MORE THAN 20 BECAUSE YOU
02:51:50 2 ARE ONLY LOOKING AT THAT LIST.

02:51:51 3 SO THAT CONSTRAINS THE INVESTIGATION IN THE SAME WAY THAT
02:51:54 4 MY INVESTIGATION WAS CONSTRAINED TO THIS 506.

02:51:58 5 Q. OKAY. AND IN THIS CASE, YOU FOUND -- ACTUALLY, WHAT I
02:52:04 6 WOULD LIKE YOU TO DO IS, IF YOU COULD, TELL US -- REMIND US
02:52:11 7 WHAT YOU FOUND FOR AT LEAST A FEW OF THE OTHER NETWORKING
02:52:15 8 VENDORS THAT WE'VE HEARD ABOUT LIKE BROCADE AND HP AND EXTREME,
02:52:19 9 IF YOU STILL HAVE THE MARKER?

02:52:21 10 A. I DO.

02:52:22 11 Q. I WOULD LIKE YOU TO WRITE THOSE ON THERE.

02:52:26 12 A. I THINK WE'VE SEEN THESE NUMBERS A FEW TIMES, BUT I GUESS
02:52:35 13 JUST TO RECALL WHAT THEY ARE, BROCADE WAS 243. DELL WAS 269.
02:52:54 14 EXTREME WAS 202. HP, 129. AND JUNIPER, ONCE AGAIN THIS IS
02:53:05 15 JUNOS-E, AT 218.

02:53:09 16 Q. OKAY. AND DID YOU GET THAT RIGHT?

02:53:15 17 A. I THINK SO.

02:53:16 18 Q. AND YOUR CHEAT SHEET, IS THAT BASED UPON THE ANALYSIS THAT
02:53:20 19 YOU DID IN THE CASE?

02:53:21 20 A. CORRECT, YES.

02:53:22 21 Q. ALL RIGHT. ARE THERE TECHNICAL REASONS IN ADDITION TO THE
02:53:29 22 SORT OF MATHEMATICAL REASON YOU GAVE, ARE THERE TECHNICAL
02:53:32 23 REASONS YOU DIDN'T FIND MORE THAN 260 OR SO IN ANY OF THESE
02:53:37 24 OTHER VENDORS?

02:53:38 25 A. SURE. I MEAN, AS I ATTEMPTED TO EXPLAIN WITH THAT

02:53:41 1 ANALOGY, IF I'M ONLY LOOKING AT THE 506, WELL, I CAN'T FIND
02:53:46 2 MORE THAN 506.

02:53:47 3 IF I WERE TO OPEN IT UP THE WAY THAT I DID WITH DELL, THEN
02:53:51 4 I MIGHT FIND COMMANDS THAT AREN'T IN THE 506 THAT ARE SHARED IN
02:53:56 5 COMMON BETWEEN CISCO AND EACH OF THESE VENDORS.

02:53:59 6 Q. CAN YOU CONCLUDE FROM YOUR FINDINGS THAT ANY ONE NETWORK
02:54:06 7 VENDOR, BE IT ARISTA OR EXTREME OR ANYONE ELSE, USES MORE CISCO
02:54:12 8 COMMANDS THAN ANOTHER VENDOR?

02:54:15 9 A. NO. I MEAN, YOU CAN'T -- YOU CAN'T DO A RANKING OR A
02:54:19 10 COMPARATIVE ANALYSIS WITH THIS BECAUSE WE'VE RESTRICT TODAY TO
02:54:23 11 JUST THAT SET.

02:54:24 12 IN ORDER TO DO A RANKED ANALYSIS, YOU WOULD HAVE TO DO A
02:54:30 13 COMMAND COMPARISON ACROSS THE BOARD.

02:54:34 14 Q. SO GOING BACK TO THE INITIAL QUESTION THAT YOU ASKED WHEN
02:54:39 15 YOU BEGAN THIS INVESTIGATION, WHAT DOES YOUR FINDINGS TELL YOU
02:54:45 16 TO HELP YOU ANSWER THAT QUESTION?

02:54:47 17 A. WELL, MY FINDINGS SAY, WELL -- SO TO GO BACK IT MY INITIAL
02:54:52 18 QUESTION, THE QUESTION I WANTED TO ANSWER WAS, HOW MANY VENDORS
02:54:59 19 AND TO WHAT EXTENT ARE THESE CLI COMMANDS USED?

02:55:02 20 AND SO TO ME, EVEN RESTRICTED TO THIS VERY CONSERVATIVE
02:55:06 21 APPROACH, RIGHT, WHERE I ONLY LOOKED AT THE 506, WE STILL SEE
02:55:09 22 MAJOR PLAYERS WHO USE HUNDREDS, SOMETIMES 200 OR MORE COMMANDS
02:55:14 23 FROM THIS RESTRICTED SET.

02:55:19 24 MR. FERRALL: WITH THAT, YOUR HONOR, I HAVE NO
02:55:22 25 FURTHER QUESTIONS FOR DR. BLACK.

02:55:23 1 THE COURT: OKAY. CROSS-EXAMINATION, MR. NELSON?

02:55:26 2 MR. NELSON: THANK YOU, YOUR HONOR.

02:55:37 3 **CROSS-EXAMINATION**

02:55:38 4 BY MR. NELSON:

02:55:38 5 Q. GOOD AFTERNOON, DR. BLACK.

02:55:39 6 A. HELLO AGAIN, MR. NELSON.

02:55:41 7 Q. HOW ARE YOU DOING?

02:55:42 8 A. I MISS MY KIDS, BUT I'M DOING OKAY.

02:55:44 9 Q. I DO TOO. NOT YOURS, MINE.

02:55:52 10 SO I JUST WANT TO TALK A LITTLE BIT ABOUT WHERE YOU
02:55:55 11 FINISHED OFF THERE, JUST SO WE ARE ALL CLEAR.

02:55:58 12 SO WHEN YOU SAY BROCADE, 243, RIGHT, YOU WERE LOOKING
02:56:02 13 ACROSS ALL THE PRODUCTS THEY MADE OVER MANY YEARS, RIGHT? OR I
02:56:07 14 SHOULD SAY A SAMPLING OF PRODUCTS THAT WERE MADE OVER MANY
02:56:12 15 YEARS, RIGHT?

02:56:12 16 A. IF YOU WANT TO TAKE BROCADE SPECIFICALLY, ACTUALLY ALMOST
02:56:16 17 ALL THE OVERLAP COMES FROM A SINGLE MANUAL. BUT THERE ARE
02:56:19 18 VENDORS WHERE WHAT YOU DESCRIBE IS MORE THE CASE.

02:56:22 19 Q. RIGHT.

02:56:22 20 SO LIKE WITH HP, WE COULD TAKE HP, THERE MAY BE MULTIPLE
02:56:25 21 MANUALS OVER TIME, RIGHT? SO YOU CAN'T EVEN SAY THAT THERE'S
02:56:29 22 129 IN ANY ONE GIVEN PRODUCT.

02:56:32 23 A. I AGREE.

02:56:33 24 Q. OKAY. AND I COULD GO THROUGH THE OTHERS, BUT JUST SO WE
02:56:35 25 ARE CLEAR, YOU CAN'T SAY THERE'S 218 IN JUNOS-E IN ANY GIVEN

02:56:39 1

PRODUCT, RIGHT?

02:56:41 2

A. FOR EACH EXAMPLE, MAYBE SOME ARE MORE CONCENTRATED SOME

02:56:46 3

ARE MORE LIKE WHAT YOU ARE SUGGESTING.

02:56:48 4

Q. OKAY. SO JUST WANTED TO BE CLEAR ON THAT.

02:56:50 5

SO IF I GO TO THE EXHIBIT YOU TALKED ABOUT, I THINK IT WAS

02:56:53 6

7357. AND THIS IS ALREADY IN EVIDENCE. I THINK IT'S THE FIRST

02:57:00 7

DOCUMENT YOU TALKED ABOUT.

02:57:01 8

MR. NELSON: AND IF YOU CAN GO TO PAGE 22953, THAT'S

02:57:07 9

THE BATES NUMBER, MR. FISHER.

02:57:11 10

A. I'M WITH YOU.

02:57:12 11

Q. OKAY. SO YOU'RE THERE. YOU TALKED ABOUT THE

02:57:15 12

PROGRAMMABILITY AND EXTENSIBILITY, THAT'S THAT FIRST SECTION ON

02:57:19 13

THAT PAGE; RIGHT?

02:57:20 14

A. YES, SIR.

02:57:21 15

Q. SO, BUT YOU'RE AWARE THAT THAT EXTENSIBILITY IS ACCUSED OF

02:57:25 16

INFRINGING THE '526 PATENT IN THIS CASE; RIGHT?

02:57:28 17

A. I DON'T KNOW ANYTHING REALLY ABOUT THE 526.

02:57:31 18

Q. OKAY. SO YOU DON'T KNOW ONE WAY OR THE OTHER?

02:57:34 19

A. I HAVEN'T LOOKED AT THAT QUESTION AT ALL.

02:57:36 20

Q. ALL RIGHT. SO NOW, I JUST, CAN I FLIP THAT -- CAN WE FLIP

02:57:40 21

THAT ONE BACK?

02:57:41 22

A. SHALL I?

02:57:42 23

MR. PAK: I CAN DO THAT.

02:57:44 24

THE WITNESS: THANK YOU, MR. PAK.

02:57:45 25

MR. PAK: YOUR HONOR, MAY I APPROACH? AND I HAVE

02:57:47 1

SOME BINDERS.

02:57:48 2

THE COURT: YES, GO AHEAD.

02:58:01 3

BY MR. NELSON:

02:58:02 4

Q. SO THEN IN THE -- WE DIDN'T MARK IT -- OH, YOU WANT ME TO

02:58:06 5

DO THAT. THIS IS DANGEROUS. I WILL TRY IT.

02:58:11 6

SO I JUST WANT TO BE CLEAR ON WHAT YOU ARE SHOWING HERE.

02:58:15 7

YOU WERE SHOWING THE USE OF API'S TO ISSUE CLI COMMANDS; RIGHT?

02:58:22 8

A. EAPI IN PARTICULAR IN THIS CASE, THERE ARE OTHER API'S.

02:58:26 9

Q. RIGHT.

02:58:27 10

SO HERE IN THE EXAMPLE YOU GAVE, THIS "SHOW CLOCK," THAT

02:58:31 11

WOULD BE THE, AN EXAMPLE IN WHAT YOU WROTE, OF THE CLI COMMAND;

02:58:37 12

RIGHT?

02:58:37 13

A. CORRECT.

02:58:37 14

Q. SO THE API'S WILL ACTUALLY GO AHEAD AND ISSUE THE CLI

02:58:42 15

COMMANDS, CORRECT?

02:58:43 16

A. THE EAPI IS NOT ACTIVE ELEMENT IN THE PROGRAM, IT'S JUST A

02:58:48 17

DESCRIPTION OF HOW YOU TALK TO THE PROGRAM. SO CLOSE.

02:58:53 18

Q. OKAY. YEAH. SO IT WILL TALK TO THE PROGRAM TO PASS OFF

02:58:57 19

THE CLI COMMAND?

02:58:57 20

A. THROUGH THE API'S.

02:59:00 21

Q. SO THEN JSON, YOU TALKED ABOUT JSON, THAT'S KIND OF LIKE

02:59:05 22

THE TOOL OR WHATEVER YOU USED TO PROGRAM THE API'S?

02:59:08 23

A. NO IT'S THE MARKUP FORMAT. IT'S THE RULES THAT SAY WHERE

02:59:12 24

THE QUOTES AND BRACES GO.

02:59:14 25

Q. SO KIND OF LIKE XML?

02:59:16 1 A. IN SOME WAYS IT'S KIND OF LIKE XML, IT'S THE MODERN AND
02:59:20 2 LIGHT WEIGHT FORM IN THIS SENSE.

02:59:22 3 Q. IT'S KIND OF LIKE A PROGRAMMING LANGUAGE ALMOST?

02:59:25 4 A. NO. A PROGRAMMING LANGUAGE LETS YOU PROGRAM AND DESCRIBE
02:59:28 5 ALGORITHMS, THIS IS JUST A MARKUP --

02:59:30 6 Q. RIGHT. GOT YOU.

02:59:31 7 A. -- THAT LETS YOU FORMAT DATA.

02:59:33 8 Q. RIGHT. ALL RIGHT.

02:59:34 9 SO NOW WITH -- I WANT YOU TO -- WE CAN PUT IT UP, IT'S IN
02:59:39 10 EVIDENCE, EXHIBIT 187.

02:59:44 11 MR. NELSON: AND MR. FISHER, IF WE COULD GO TO THE
02:59:47 12 LAST, WELL, IT'S THE PAGE BATES MARKED 426, THE LAST THREE
02:59:55 13 NUMBERS.

02:59:59 14 A. SHALL I JUST USE THE SCREEN? BECAUSE I'M NOT SEEING IT
03:00:02 15 HERE.

03:00:02 16 Q. YEAH. I DON'T THINK IT'S THERE. THE SCREEN IS GOOD, IF
03:00:05 17 YOU ARE COMFORTABLE WITH THAT.

03:00:07 18 A. SURE.

03:00:07 19 Q. SO YOU SEE THE E-MAIL JUNE 13, 2012, FROM MS. ULLAL;
03:00:15 20 RIGHT?

03:00:15 21 A. I SEE IT.

03:00:15 22 Q. SHE SAYS, "DID YOU READ THAT CISCO'S SDM PRESENTATION RUNS
03:00:19 23 A WHOPPING 93 SLIDES."

03:00:20 24 DO YOU SEE THAT?

03:00:21 25 A. I DON'T MEAN TO BE DIFFICULT, WAS HERS DOUBLE ANGLE

03:00:25 1 BRACKET OR TRIPLE ANGLE BRACKET?

03:00:27 2 OH, I SEE, THERE'S A -- I'M WITH YOU. JAYSHREE ULLAL
03:00:31 3 WROTE, "DID YOU READ THAT CISCO'S SDM PRESENTATION RUNS A
03:00:34 4 WHOPPING 93 SLIDES."

03:00:36 5 YES.

03:00:36 6 Q. RIGHT. SHE SAID THAT?

03:00:39 7 A. I ASSUME SO.

03:00:40 8 Q. YEAH. RIGHT. HERE IN THIS DOCUMENT. "SDM," YOU
03:00:43 9 UNDERSTAND THAT'S "SOFTWARE DEFINED NETWORKING?"

03:00:44 10 A. THAT'S WHAT IT STANDS FOR.

03:00:46 11 Q. OKAY. SO THIS WAS REFERRING TO A PRESENTATION THAT
03:00:50 12 MS. ULLAL HAD SEEN ABOUT CISCO?

03:00:51 13 A. I AM MAKING A LOT OF SPECULATION TO ANSWER THAT, BUT I
03:00:55 14 WILL TRUST YOU ON THAT POINT.

03:00:57 15 Q. OKAY. SO NOW, IF I GO TO THE NEXT E-MAIL OR THE ONE ON
03:01:03 16 THE PAGE BATES MARKED 425.

03:01:13 17 YEAH, IF WE CAN BLOW UP THAT BOTTOM ONE, IT'S DATED
03:01:18 18 JUNE 13, 2012.

03:01:23 19 SO THIS ONE IS MR. GOURLAY WHO WRITES THIS; RIGHT?

03:01:29 20 A. YES, SIR.

03:01:29 21 Q. OKAY. SO IF I GO TO THE VERY BOTTOM ONE, IT'S NUMBER 2
03:01:35 22 THERE.

03:01:37 23 A. I SEE IT.

03:01:38 24 Q. IT SAYS, "KEN BROUGHT UP A REALLY GOOD POINT POST ORACLE
03:01:43 25 VERSUS GOOGLE, JUST BLATANTLY COPY CISCO'S API'S."

03:01:50 1 DO YOU SEE THAT?

03:01:50 2 A. I SEE THAT.

03:01:51 3 Q. DOES THAT TELL YOU CISCO HAD API'S LIKE THIS?

03:01:54 4 A. OH, I HAVE NO DOUBT THEY HAD API'S. THAT'S LIKE SAYING
03:01:58 5 THEY HAD A PROGRAMMING LANGUAGE, IT'S A VERY GENERAL TERM, IT
03:02:01 6 DOESN'T NECESSARILY REFER TO EAPI IN ANY SENSE.

03:02:04 7 Q. RIGHT.

03:02:04 8 BUT MR. DUDA, AT LEAST ACCORDING TO MR. GOURLAY, MR. DUDA
03:02:08 9 SAID "LET'S BLATANTLY COPY THOSE;" RIGHT?

03:02:11 10 A. I CAN CONFIRM THOSE WORDS DO APPEAR. I DON'T KNOW WHAT HE
03:02:15 11 WAS THINKING, OF COURSE.

03:02:15 12 Q. NO, UNDERSTOOD. SO -- AND THEN, IF I GO TO THE VERY TOP
03:02:26 13 E-MAIL FROM MR. DUDA TO MR. GOURLAY --

03:02:33 14 A. I SEE IT.

03:02:35 15 Q. YOU WILL SEE THE MIDDLE PARAGRAPH, HIS RESPONSE IS "I WANT
03:02:40 16 TO BUILD EAPI'S SO BADLY."

03:02:43 17 A. I SEE THAT.

03:02:43 18 Q. SO THIS IS IN THE SAME E-MAIL STRING HERE IN EXHIBIT 187
03:02:47 19 WHERE THE STATEMENT IS MADE "JUST BLATANTLY COPY CISCO'S EAPI,"
03:02:53 20 CORRECT?

03:02:53 21 A. I THINK. I HAVE NEVER SEEN THIS BEFORE, SO THIS IS JUST
03:02:56 22 BEING SHOWN TO ME FOR THE FIRST TIME.

03:02:57 23 MR. NELSON: OKAY. THANK YOU, SIR.

03:02:58 24 I DON'T HAVE ANY MORE QUESTIONS, YOUR HONOR.

03:03:00 25 THE COURT: ALL RIGHT.

MR. FERRALL, DO YOU HAVE ANYTHING ELSE FOR DR. BLACK?

MR. FERRALL: NONE FROM ME, YOUR HONOR.

THE COURT: ALL RIGHT.

DR. BLACK, THANK YOU FOR YOUR TESTIMONY. YOU MAY STEP
DOWN.

NEXT WITNESS, MR. VAN NEST?

MR. VAN NEST: YOUR HONOR, AT THIS TIME ARISTA
NETWORKS RESTS ALSO.

THE COURT: ALL RIGHT.

I HESITATE TO ASK, BUT IS THERE MORE FOR THE PLAINTIFF?

MR. NELSON: I'M GOING TO DONATE MY TIME TO THE JURY.

THE COURT: ALL RIGHT. BOTH SIDES REST?

MR. NELSON: THANK YOU.

THE COURT: ALL RIGHT. WELL, THAT'S NICE. I
PROJECTED 3:00, SO THAT'S PRETTY GOOD. I TOOK AN EXTRA
FIVE-MINUTE BREAK.

LADIES AND GENTLEMEN, WE HAVE COME TO THE END OF THE
PRESENTATION OF THE EVIDENCE IN THE CASE. SO IN A MINUTE OR
TWO, I'M GOING TO SEND YOU HOME FOR THE WEEKEND, WHICH I KNOW
YOU ALL APPRECIATE.

LET ME TELL YOU WHAT COMES NEXT. ON MONDAY MORNING, I
WILL READ THE JURY INSTRUCTIONS TO YOU ON THE LAW AND THEN THE
ATTORNEYS WILL GIVE YOU THEIR FINAL CLOSING ARGUMENTS.

SO THIS GETS TO BE ONE OF THOSE TIMES IN THE CASE YOU'VE
HEARD ALL THE EVIDENCE, HUMAN NATURE IS TO START PUTTING IT ALL

03:04:02 1 TOGETHER, AND I HAVE TO ASK YOU NOT TO.

03:04:05 2 REMEMBER I SAID AT THE VERY BEGINNING, THERE'S NO HOMEWORK
03:04:07 3 IN JURY DUTY. AND YOU NEED TO TALK TO EACH OTHER, YOU NEED TO
03:04:10 4 HAVE THE EVIDENCE. YOU'VE NOTICED THAT THERE HAVE BEEN A FEW
03:04:13 5 BINDERS OF EVIDENCE FOR YOU, AND YOU NEED THE JURY
03:04:17 6 INSTRUCTIONS.

03:04:17 7 AND SO I DON'T WANT YOU TO FORGET EVERYTHING, I JUST WANT
03:04:21 8 YOU TO GIVE IT A REST, THERE'S NO ONE TO TALK TO AT HOME ABOUT
03:04:25 9 IT ANYWAY, YOU CAN'T TALK AMONG YOURSELVES UNTIL I SEND YOU TO
03:04:28 10 THE JURY ROOM TO DELIBERATE. SO I'M SURE YOU HAVE MORE THAN
03:04:31 11 ENOUGH HOLIDAY SHOPPING TO DO AND CATCH UP AND GETTING BACK TO
03:04:35 12 WORK FOR THOSE OF YOU WHO HAVE TO WORK OVER THE WEEKEND, SO I
03:04:39 13 KNOW YOU WILL BE BUSY.

03:04:40 14 ON MONDAY, I EXPECT THAT BY EARLY TO MID-AFTERNOON, THE
03:04:44 15 CASE WILL BE IN YOUR HANDS. AND I WILL HAVE LOTS OF
03:04:47 16 INSTRUCTIONS FOR YOU ON HOW TO DO YOUR JOB AS JURORS.

03:04:51 17 BUT ONCE THAT'S THE CASE, ALTHOUGH YOU CONTINUE TO WORK
03:04:54 18 FULL DAYS UNTIL YOU ARE DONE, YOU REALLY KIND OF -- YOU RUN THE
03:04:57 19 SHOW YOURSELVES. YOU ARE IN A ROOM THAT NONE OF US, INCLUDING
03:05:01 20 ME, IS ALLOWED INTO.

03:05:02 21 SO YOU REALLY -- YOU KNOW, I JUST GET TO PACE UP AND DOWN
03:05:05 22 THE HALL, BUT I DON'T GET TO SEE YOU. BUT WE ARE HERE FOR YOU
03:05:09 23 WHEN YOU NEED US.

03:05:10 24 SO WITH THAT, I'M GOING TO HAVE YOU LEAVE YOUR BINDERS AND
03:05:13 25 YOUR NOTEBOOKS AND YOUR BADGES ON YOUR CHAIRS.

03:05:17 1 LET ME REMIND YOU NOT TO DO ANY RESEARCH OR INVESTIGATION
03:05:20 2 OR TALK TO ANYONE ABOUT ANYTHING IN REGARDS TO THE CASE.

03:05:23 3 HAVE A GREAT WEEKEND. SEE YOU MONDAY MORNING AT 9:00.
03:05:28 4 (JURY OUT AT 3:05 P.M.)

03:05:29 5 THE COURT: ALL RIGHT. PLEASE BE SEATED, EVERYONE.
03:06:11 6 WE ARE BACK ON THE RECORD OUTSIDE THE PRESENCE OF THE JURY.

03:06:14 7 I HAVE A FEW HOUSEKEEPING MATTERS, AND I IMAGINE THAT YOU
03:06:17 8 DO AS WELL.

03:06:18 9 I'M GOING TO PRESUME THAT THE JURY INSTRUCTIONS ARE MOVING
03:06:21 10 ALONG COMFORTABLY AND I WILL JUST RECEIVE A COMPLETED SET?

03:06:27 11 MS. SULLIVAN: YES, YOUR HONOR.

03:06:28 12 WE ARE WORKING COLLABORATIVELY AND WE EXPECT A COMPLETED
03:06:31 13 SET FOR YOU THIS AFTERNOON.

03:06:33 14 THE COURT: THAT'S WONDERFUL.

03:06:35 15 MR. KWUN: I THINK THEY ARE GETTING VERY CLOSE AND WE
03:06:37 16 ARE HOPEFUL WE WILL HAVE SOMETHING TO YOU THIS AFTERNOON.

03:06:41 17 MS. SULLIVAN: WE ARE HOPEFUL, CERTAINLY BEFORE YOU
03:06:43 18 GIVE THEM TO THE JURY.

03:06:44 19 THE COURT: YOU KNOW, THAT YOU COULD GUARANTEE,
03:06:46 20 COULDN'T YOU.

03:06:46 21 THANK YOU.

03:06:47 22 MS. SULLIVAN: YOUR HONOR, I WAS JUST GOING TO SAY,
03:06:50 23 BOTH THE INSTRUCTIONS AND THE JURY FORM, THE VERDICT FORM.

03:06:53 24 THE COURT: YES. THANK YOU.

03:06:59 25 AND AT THIS LATE HOUR, I'M GOING TO PRESUME ANY SMOOTHING

YOU ARE DOING, YOU WILL DO YOURSELVES AND WILL NOT REQUIRE
ANYTHING FOR ME BECAUSE MONDAY MORNING WOULD NOT WORK FOR ME.

MS. SULLIVAN: THAT'S CORRECT. YOUR HONOR.

THE COURT: EXCELLENT. I REALLY APPRECIATE THAT
COLLABORATIVE EFFORT. WE MADE SOME GREAT PROGRESS YESTERDAY.

THIS AFTERNOON WE ARE GOING TO DO SOME MOTIONS, AND WE
SAID THAT WE WOULD. BUT LET ME JUST COMMENT THAT FOR CLOSING
ARGUMENTS, I KNOW YOU MAY HAVE SOME DISAGREEMENTS WITH EACH
OTHER'S DEMONSTRATIVES. I DO NOT REFEREE THAT. I DO NOT WANT
YOUR CLOSING ARGUMENTS TO BE HANGING IN THE BALANCE AND CHANGES
MADE AT THE LAST MINUTE MONDAY MORNING.

SO WORK IT OUT OR DON'T USE THEM.

SO IF SOMEONE IS FRANTICALLY TRYING TO FILE A MOTION, JUST
KEEP WORKING ON IT, BECAUSE IT'S JUST -- YOU'VE GOT TO WORK
THAT OUT, AND I'M SURE YOU WILL. YOU HAVE REALLY NOT NEEDED MY
HELP ON DEMONSTRATIVES IN THIS TRIAL, SO I DON'T HAVE ANY WORRY
ABOUT THAT.

HAVE YOU BEEN PREPARING A LIST OF EXHIBITS FOR THE JURY AS
WE HAVE BEEN GOING ALONG? SO THAT'S IN ORDER. MAKE SURE IF
YOU HAVEN'T ALREADY, THAT YOU REVIEW THE LIST OF ADMITTED
EXHIBITS.

IF THERE'S SOMETHING THAT YOU THINK WAS ADMITTED AND IT
DOESN'T HAVE THE CHECK MARK BY IT, I WANT TO GIVE YOU THE
OPPORTUNITY TO MAKE SURE THAT THE RECORD IS AS YOU THINK IT
SHOULD BE.

03:08:11 1 SOMETIMES YOU FORGET, SOMETIMES WE MAKE A MISTAKE, BUT I
03:08:15 2 DON'T HOLD YOU TO SAYING YOU RESTED AND THEN SOMETHING IS JUST
03:08:18 3 LEFT OUT. SO YOU HAVE AN OPPORTUNITY TO DO THAT.

03:08:22 4 WE TALKED ABOUT IDENTIFYING THE EXHIBITS THAT MAKE UP THE
03:08:27 5 WORKS. AND I WOULD LIKE A COPY OF THOSE EXHIBITS EXTRACTED,
03:08:32 6 BUT I HAD ASKED THE QUESTION, AND WE MAY HAVE RESOLED THIS, BUT
03:08:36 7 WERE WE GOING TO TELL THE JURY SPECIFICALLY WHICH EXHIBITS MAKE
03:08:40 8 UP THE WORKS IN THE CASE, OR NOT?

03:08:48 9 I SAID YESTERDAY I DON'T NORMALLY CALL OUT EXHIBITS TO
03:08:51 10 THE JURY, THAT MUCH I REMEMBER. BUT IT'S CONTINUED TO NAG ME
03:08:55 11 THAT I'M TELLING THEM TO EXAMINE THE WORKS AS A WHOLE AND HOW
03:09:00 12 WILL THEY FIND THEM?

03:09:03 13 SO I NEED TO BE PERSUADED THAT I CAN EITHER LEAVE IT
03:09:06 14 ALONE OR DO SOMETHING.

03:09:07 15 MR. NELSON: I THINK YOU CAN LEAVE IT ALONE.

03:09:10 16 YOU DEFINED THEM IN THE JURY INSTRUCTION AND BOTH IN THE
03:09:13 17 PRELIMINARY INSTRUCTION. I THINK FOR ARGUMENT PURPOSES,
03:09:15 18 WHETHER MR. VAN NEST OR MYSELF, WHEN I IDENTIFY THE PARTICULAR
03:09:20 19 EXHIBITS THAT THEY SHOULD LOOK AT FOR THAT, IF THAT'S RELEVANT,
03:09:23 20 THEY CAN DO THAT.

03:09:24 21 WE HAVE THOSE THINGS IN EVIDENCE AND WE CERTAINLY CAN
03:09:27 22 IDENTIFY THOSE, AT LEAST THE KEY ONES. YOU KNOW, PART OF THE
03:09:30 23 PROBLEM IS THAT WE HAD THAT ONE EXHIBIT THAT WAS ALL THE
03:09:34 24 REGISTRATIONS AND IT'S -- I MEAN, THAT WOULD TAKE PROBABLY AN
03:09:38 25 HOUR FOR YOUR HONOR TO JUST READ ALL THOSE NUMBERS. I MEAN,

03:09:42 1 MAYBE NOT, BUT CLOSE.

03:09:44 2 SO I'M NOT SURE THAT THAT'S SOMETHING THAT WE WANT TO PUT
03:09:47 3 INTO THE JURY INSTRUCTION NOR DO I THINK THAT IT --

03:09:51 4 THE COURT: OKAY. WELL, HERE'S WHAT -- I GUESS --
03:09:54 5 I'M GOING TO BE INSTRUCTING THEM ABOUT COMPARING THE WORK. I
03:09:58 6 THINK YOU NEED TO HAVE AVAILABLE FOR ME, IF I GET A QUESTION,
03:10:02 7 WHERE WOULD WE FIND THE WORK.

03:10:04 8 MR. NELSON: YOU'VE GOT IT.

03:10:06 9 THE COURT: YOU MIGHT NEVER GET THE QUESTION, BUT I
03:10:09 10 DON'T WANT YOU COMPILING IT WHEN THE QUESTION COMES OUT.

03:10:12 11 MR. NELSON: WE CERTAINLY CAN DO THAT.

03:10:14 12 THE COURT: AND AS I SAY, I NEVER CALL OUT EXHIBITS
03:10:17 13 TO THE JURY, IT'S FOR THEM TO DETERMINE WHICH ONES ARE
03:10:21 14 IMPORTANT AND WHICH ONES AREN'T. SO I WILL STICK TO MY NORMAL
03:10:23 15 TRAINING AND NOT DO THAT, BUT THAT'S A CONCERN I HAVE. SO IF
03:10:26 16 YOU CAN AT LEAST HAVE THAT AVAILABLE, THAT WOULD BE GREAT.

03:10:29 17 AND I GUESS, YOU KNOW, WE ALWAYS HOPE THERE ARE NO
03:10:31 18 QUESTIONS, THAT EVERYTHING HAS BEEN ABUNDANTLY CLEAR FOR THE
03:10:34 19 JURY.

03:10:35 20 OKAY. THAT'S FINE. AND THEY DO HAVE THE GENERAL LIST OF
03:10:38 21 EXHIBITS, SO THAT'S HELPFUL.

03:10:39 22 ALL RIGHT. THAT'S MY ONLY HOUSEKEEPING. ANY REAL
03:10:46 23 HOUSEKEEPING BEFORE WE GO TO THE MOTIONS?

03:10:48 24 MR. FERRALL: I HAVE A VERY MINOR HOUSEKEEPING WHICH
03:10:52 25 IS, I WOULD LIKE TO MARK THOSE TWO DRAWINGS AS DEMONSTRATIVES.

03:10:54 1 THE COURT: SURE. LET'S MARK THEM NEXT IN ORDER AS
03:10:57 2 DEMONSTRATIVES.

03:10:57 3 MR. FERRALL: 9082 AND 9083.

03:11:00 4 THE COURT: OKAY.

03:11:01 5 (DEFENDANT'S 9082 AND 9083 WERE MARKED FOR IDENTIFICATION.)

03:11:02 6 MR. NELSON: AND I THINK I HAVE SOME GOOD NEWS ON THE
03:11:05 7 MOTIONS, YOUR HONOR.

03:11:05 8 WE ARE JUST GOING TO GO AHEAD AND SUBMIT IT IN WRITING. I
03:11:08 9 DON'T KNOW IF ARISTA IS, SO THAT WILL SAVE YOUR HONOR SOME
03:11:12 10 TIME.

03:11:12 11 THE COURT: THAT'S GREAT. YOU KNOW, I HAVEN'T HAD
03:11:13 12 THAT DONE BEFORE, SO THAT'S GOOD.

03:11:15 13 MR. NELSON: DON'T EXPECT THE SHAKESPEARIAN WORK, BUT
03:11:19 14 WE WILL GET IT THERE FOR YOU.

03:11:21 15 MR. VAN NEST: AND, I SHOULD WARN COUNSEL, AFTER
03:11:24 16 YOUR HONOR'S REMARKS, WE DECIDED WE WOULD MAKE IT ORALLY. SO
03:11:29 17 WE ARE GOING TO DO IT ORALLY THIS AFTERNOON ON THE RECORD AND
03:11:31 18 NOT FILE A PLEADING.

03:11:33 19 MS. SULLIVAN: YOUR HONOR, I'M SO SORRY, IN LIGHT OF
03:11:35 20 WHAT WE THOUGHT WAS GOING TO BE ARISTA'S PLAN TO FILE IT IN
03:11:39 21 WRITING AND BECAUSE IT'S BEEN A LONG WEEK TO TRY TO SPARE THE
03:11:42 22 COURT, WE HAD PLANNED TO DO OURS IN WRITING NOW.

03:11:46 23 MR. VAN NEST: THAT'S WHAT HE JUST SAID. THAT'S
03:11:48 24 FINE.

03:11:50 25 MS. HADLOCK AND MR. ROSEN WILL PUT OUR MOTIONS ON THE

03:11:54 1 RECORD AND IT SHOULDN'T TAKE LONG.

03:11:55 2 THE COURT: YOU KNOW, I'M ABSOLUTELY GLAD DO IT, WE
03:11:59 3 FINISHED SO EARLY TODAY IT FEELS LIKE A HALF DAY.

03:12:03 4 AND SO I JUST WANT YOU TO HAVE THE RECORD YOU WANT, THAT'S
03:12:05 5 ALL. AND SO YOU WILL SUBMIT YOURS IN WRITING AND I WILL DEEM
03:12:08 6 IT TO BE TIMELY.

03:12:09 7 MR. NELSON: YES.

03:12:09 8 THE COURT: ALL RIGHT. THAT'S FINE.

03:12:10 9 AND MR. VAN NEST --

03:12:12 10 MR. VAN NEST: MS. HADLOCK AND MR. ROSEN ARE HERE AND
03:12:16 11 THEY WILL PROCEED WHEN YOU ARE READY.

03:12:18 12 THE COURT: AND MR. NELSON, I CUT YOU OFF.

03:12:19 13 MR. NELSON: I JUST MEANT WE ARE GOING TO DO IT,
03:12:21 14 OBVIOUSLY, WELL BEFORE IT GOES TO THE JURY, SO THAT'S NOT ANY
03:12:24 15 PROBLEM.

03:12:25 16 THE COURT: OKAY.

03:12:26 17 MR. NELSON: I DON'T KNOW IF YOU WANT US TO FILE IT
03:12:28 18 OVER THE WEEKEND OR ON MONDAY MORNING. I GUESS WHEN WE ARE
03:12:31 19 DOING IT ELECTRONICALLY, IT PROBABLY DOESN'T MATTER SO MUCH.

03:12:34 20 THE COURT: YOU KNOW, I DON'T THINK THAT'S GOING TO
03:12:36 21 BE A PROBLEM. YOU'VE MADE YOUR MOTION AND NOW IT'S A MATTER OF
03:12:40 22 FILING THE BRIEF THAT SUPPORTS IT.

03:12:42 23 MR. NELSON: THANK YOU, YOUR HONOR.

03:12:43 24 THE COURT: I WILL DEEM IT TO BE TIMELY.

03:12:45 25 MR. NELSON: THANK YOU.

03:12:45 1 THE COURT: AND YOU WILL FILE IT NO LATER THAN
03:12:47 2 MONDAY.

03:12:47 3 AND THERE WILL BE NO OBJECTION TO IT BEING FILED ON
03:12:50 4 MONDAY?

03:12:50 5 MR. VAN NEST: THAT'S RIGHT, YOUR HONOR.

03:12:51 6 THE COURT: THANK YOU. I THINK THAT SHOULD TAKE CARE
03:12:53 7 OF IT.

03:12:53 8 MR. NELSON: OKAY. THANK YOU. I APPRECIATE IT.

03:12:54 9 THE COURT: ALL RIGHT. AND MS. HADLOCK, MR. ROSEN,
03:12:57 10 WOULD YOU LIKE TO PRESENT THE DEFENSE MOTION?

03:13:12 11 MS. HADLOCK: IT WILL BE THRILLING, YOUR HONOR, I
03:13:14 12 PROMISE. AUDREY HADLOCK FOR ARISTA NETWORKS.

03:13:24 13 ARISTA MOVES FOR JUDGMENT AS A MATTER OF LAW ON ALL OF
03:13:27 14 CISCO'S CLAIMS. I WILL ADDRESS THE COPYRIGHT CLAIMS FIRST AND
03:13:30 15 MR. ROSEN WILL PRESENT THE PATENT ARGUMENTS.

03:13:34 16 THE COURT: OKAY.

03:13:35 17 MS. HADLOCK: NO REASONABLE JURY COULD RETURN A
03:13:37 18 VERDICT IN CISCO'S FAVOR ON THIS RECORD BECAUSE CISCO LACKS
03:13:41 19 SUFFICIENT EVIDENCE TO PROVE THAT ANY ASSERTED ELEMENTS OF ITS
03:13:43 20 WORKS ARE ORIGINAL, CREATIVE, PROTECTED EXPRESSION, OR THAT
03:13:50 21 ARISTA COPIED PROTECTABLE ELEMENTS OR COMPILATIONS FROM CISCO'S
03:13:53 22 WORKS, OR THAT WITH ANY COPYING AMOUNTS TO ELICIT OR ACTIONABLE
03:13:58 23 COPYING AND INFRINGEMENT.

03:13:59 24 CISCO EVEN LACKS SUFFICIENT EVIDENCE FOR THE JURY TO
03:14:01 25 COMPARE THE COMPLETE WORKS OR THE ASSERTED PROTECTABLE ELEMENTS

03:14:07 1 AT ISSUE. BECAUSE OF THESE DEFICIENCIES IN CISCO'S EVIDENCE,
03:14:10 2 ARISTA IS ENTITLED TO JUDGMENT OF NONINFRINGEMENT, AND JUDGMENT
03:14:16 3 IN ITS FAVOR ON SEVERAL AFFIRMATIVE DEFENSES.

03:14:18 4 FIRST, AUTHORSHIP.

03:14:20 5 CISCO FAILED TO PRESENT SUFFICIENT EVIDENCE TO PROVE THAT
03:14:23 6 IT AUTHORED AND OWNS THE 506 INDIVIDUAL COMMANDS AND 216 HELP
03:14:31 7 DESCRIPTIONS AND THE COMMAND OUTPUTS THAT IT ASSERTS HERE OR
03:14:34 8 ALL OF THE COMMANDS AND COMMAND OUTPUTS AND HELP DESCRIPTIONS
03:14:39 9 IN ITS WORKS THAT IT HAS NOT ASSERTED HERE.

03:14:42 10 NEXT, ORIGINAL CREATIVE EXPRESSION. A REASONABLE JURY
03:14:46 11 COULD NOT FIND ON THIS RECORD THAT ANY OF THE CLI ELEMENTS OR
03:14:50 12 COMBINATIONS OF ELEMENTS THAT CISCO ASSERTS, INCLUDING THE
03:14:55 13 ASSERTED COMPILATIONS CONTAIN THE REQUISITE SPARK OF ORIGINAL
03:14:58 14 CREATIVE EXPRESSION, SEVERABLE FROM THEIR FUNCTIONS AND IDEAS,
03:15:02 15 AND NOT DICTATED BY INDUSTRY STANDARD TERMINOLOGY AND
03:15:06 16 CONVENTIONS, CUSTOMER NEEDS, PRIOR CISCO SYSTEMS, AND
03:15:11 17 PRACTICES, CONSISTENCY, EFFICIENCY, COMMERCIAL
03:15:16 18 INTEROPERABILITY, AND/OR OTHER NONCREATIVE CONSTRAINTS.

03:15:22 19 CONSIDERED SEPARATELY OR IN COMBINATION OR AS
03:15:25 20 COMPILATIONS, CISCO'S CLI ELEMENTS ARE UN COPYRIGHTABLE AND UN
03:15:30 21 PROTECTABLE UNDER SECTION 102-A, SECTION 102-B AND THE
03:15:35 22 DOCTRINES OR DEFENSES OF MERGER AND SCÈNES À FAIRE, AS WELL AS
03:15:39 23 THE SHORT WORDS AND PHRASES DOCTRINE AND THE RULE AGAINST
03:15:43 24 GRANTING PROTECTION BASED ON AN AUTHOR'S SWEAT-OF-THE-BROW OR
03:15:47 25 THEIR EFFORT.

ON THIS RECORD, A REASONABLE JURY MUST REJECT CISCO'S CLAIMS AND FIND IN ARISTA'S FAVOR ON ALL OF THESE ISSUES THAT ANY USE BY ARISTA WAS NOT INFRINGEMENT OR WAS JUSTIFIED.

THE RECORD DOES NOT SUFFICIENTLY SUPPORT A FINDING OF ANY ORIGINAL CREATIVE EXPRESSION IN THE CLI ELEMENTS SEPARABLE FROM THEIR FUNCTION AND THE ABSTRACT IDEAS THAT THEY EXPRESS.

THE CLI ELEMENTS ASSERTED ARE ALSO UN PROTECTABLE BECAUSE CISCO LACKS SUFFICIENT EVIDENCE THAT THEY ACTUALLY APPEAR AND FUNCTION IN THE FORM ASSERTED IN CISCO'S OR ARISTA'S WORKS.

NO PROTECTABLE COMPILATIONS.

CISCO ALSO LACKS SUFFICIENT EVIDENCE OF ANY POTENTIALLY PROTECTABLE COMPILATION. CISCO LACKS EVIDENCE SUFFICIENT TO PROVE THE FULL SCOPE OR CONTENTS OF ANY LEGITIMATE COMPILATION OR COMPILATIONS OF ALL OF ITS CLI COMMANDS, ITS OUTPUTS, ITS HELP STRINGS OR ITS MODES AND PROMPTS.

NEXT, THERE'S NO ELICIT COPING ON THIS RECORD. CISCO HAS NOT INTRODUCED EVIDENCE SUFFICIENT TO PROVE COPYING OF PROTECTED MATERIAL UNDER EITHER THE EXTRINSIC OR INTRINSIC VIRTUAL IDENTITY STANDARD THAT APPLIES TO THE JURY'S DETERMINATION OR TO PROVE THAT ANY COPYING WAS ACTIONABLE OR ELICIT COPYING.

HOWEVER, THE JURY VIEWS THE RECORD EVIDENCE HERE, IT CAN ONLY CONCLUDE THAT AT MOST A SMALL FRACTION OF THE CLI AND ANY PROTECTABLE ELEMENTS WAS COPIED AND THAT NEITHER ANY PROTECTABLE ELEMENTS NOR THE WORKS AS A WHOLE, ARE VIRTUALLY

03:17:22 1 IDENTICAL.

03:17:23 2 CISCO LACKS SUFFICIENT EVIDENCE TO SUPPORT ANYTHING BUT
03:17:27 3 THIN COPYRIGHT PROTECTION, AND NOT EVEN THAT.

03:17:31 4 AND BASED ON THIS TRIAL RECORD, NO REASONABLE JURY COULD
03:17:34 5 FIND EITHER SUFFICIENT DIRECT EVIDENCE THAT ARISTA COPIED
03:17:38 6 ORIGINAL OR PROTECTED MATERIAL FROM ANY OF CISCO'S COPYRIGHTED
03:17:41 7 WORKS.

03:17:43 8 NEXT IS THE WORKS AS A WHOLE. YOUR HONOR ASKED A VERY
03:17:46 9 GOOD QUESTION, WHERE WILL THEY FIND THE WORKS? THEY WON'T.

03:17:51 10 FOR THE NON-MANUAL CLAIMS ON THE INTERFACES, CISCO HAS
03:17:55 11 FAILED TO PUT ITS COMPLETE WORKS AT ISSUE INTO EVIDENCE OR EVEN
03:17:59 12 TO DEFINE THEM ADEQUATELY. SO THE JURY LACKS SUFFICIENT
03:18:03 13 EVIDENCE TO MAKE THE REQUIRED COMPARISONS OF THE WORK AS A
03:18:06 14 WHOLE TO DETERMINE INFRINGEMENT.

03:18:10 15 WITHOUT SUFFICIENT EVIDENCE OF THE WORKS AS A WHOLE, THE
03:18:12 16 JURY CANNOT CONCLUDE THAT CISCO HAS SATISFIED THE EXTRINSIC AND
03:18:17 17 INTRINSIC TESTS OR THAT ANY ALLEGED COPYING IS ACTIONABLE AS
03:18:21 18 INFRINGEMENT.

03:18:21 19 THE MANUALS AND COPYRIGHT REGISTRATIONS THAT CISCO HAS PUT
03:18:25 20 INTO EVIDENCE ARE NOT ADEQUATE BECAUSE NEITHER IS EVIDENCE OF
03:18:29 21 THE ENTIRETY OF THOSE USER INTERFACES OR CISCO'S OPERATING
03:18:35 22 SYSTEMS.

03:18:35 23 THE COPYRIGHT DEPOSITS DO NOT INCLUDE THE COMPLETE SOURCE
03:18:39 24 CODE, AND THAT IS NOT IN EVIDENCE. MANUALS DO NOT INCLUDE ALL
03:18:46 25 COMMANDS IN THE INTERFACES EITHER.

03:18:49 1 LIKewise, CISCO ALSO HAS NOT PUT ARISTA'S COMPLETE WORKS
03:18:53 2 INTO EVIDENCE. AND THE JURY LACKS SUFFICIENT EVIDENCE TO
03:18:57 3 COMPARE THOSE WORKS OR ANY PROTECTABLE ELEMENTS IN THEM TO
03:19:03 4 CISCO'S ASSERTED WORKS.

03:19:06 5 CISCO'S INTERFACES ALSO ARE NOT SEPARATE WORKS ON THIS
03:19:10 6 RECORD. CISCO LACKS SUFFICIENT EVIDENCE TO PROVE THAT ITS USER
03:19:15 7 INTERFACES HAVE ANY SEPARATE ECONOMIC OR COPYRIGHT LIFE FROM
03:19:19 8 ITS OPERATING SYSTEMS. AND THAT IS REQUIRED UNDER
03:19:22 9 NINTH CIRCUIT LAW.

03:19:26 10 THEY ALSO LACK EVIDENCE, ANY OTHER EVIDENCE THAT THE
03:19:29 11 INTERFACES COULD BE SEPARATE COPYRIGHTED WORKS.

03:19:32 12 CISCO ALSO LACKS SUFFICIENT EVIDENCE TO PROVE THAT IN THE
03:19:35 13 FORM ASSERTED AS ABSTRACT CONCEPTS, DIVORCED FROM ANY SOURCE
03:19:40 14 CODE, AND CONSOLIDATED ACROSS MULTIPLE VERSIONS MUCH FOUR CISCO
03:19:45 15 OPERATING SYSTEMS, THEY LACK EVIDENCE THAT THESE USER
03:19:48 16 INTERFACES ARE FIXED IN ANY TANGIBLE MEDIUM OF EXPRESSION AS
03:19:51 17 ALSO REQUIRED FOR COPYRIGHT PROTECTION.

03:19:54 18 NEXT, DE MINIMUS COPYING OF THE MANUALS.

03:19:57 19 CISCO'S ACCUSED COPYING FROM -- ARISTA'S ACCUSED COPYING
03:20:05 20 FROM CISCO'S TECHNICAL MANUALS IS FOR EACH AND EVERY MANUAL
03:20:08 21 ASSERTED DE MINIMUS AND NOT ACTIONABLE INFRINGEMENT.

03:20:12 22 THE EVIDENCE IS INSUFFICIENT TO SUPPORT ANY CONTRARY
03:20:14 23 FINDING. FOR EXAMPLE, ONE, TWO, OR A FEW TINY SNIPPETS THAT
03:20:25 24 CISCO HAS ASSERTED OR COPIED FROM A TECHNICAL MANUAL HUNDREDS
03:20:32 25 OF PAGES LONG OR MORE THAN A THOUSAND PAGES LONG, THAT CANNOT

03:20:33 1 BE ACTIONABLE COPYING IF IT IS TRIVIAL.

03:20:35 2 CISCO ALSO LACKS ANY SUFFICIENT EVIDENCE, OR REALLY ANY
03:20:37 3 EVIDENCE AT ALL, FOR A JURY TO FIND THAT ANY ASSERTED SNIPPET
03:20:40 4 OR SNIPPETS FROM CISCO'S MANUALS HAVE ANY SPECIAL SIGNIFICANCE
03:20:44 5 TO THOSE WORKS AS A WHOLE.

03:20:48 6 ARISTA'S ACCUSED COPYING OF CISCO'S COMMAND-LINE
03:20:53 7 INTERFACES IS ALSO DE MINIMUS AS A MATTER OF LAW WHEN PROPERLY
03:20:57 8 COMPARED TO CISCO'S ENTIRE WORKS.

03:20:59 9 THERE IS INSUFFICIENT EVIDENCE TO SUPPORT A CONTRARY
03:21:01 10 FINDING, GIVEN THE LIMITED SCOPE OF ACCUSED COPYING AND THE
03:21:04 11 SIDE OF THE WORKS. THE EVIDENCE IS EVEN MORE DEFICIENT, TAKING
03:21:09 12 INTO ACCOUNT THE VERY LIMITED SCOPE OF PROTECTION THAT IS
03:21:11 13 AVAILABLE FOR CISCO'S WORKS.

03:21:17 14 ON ARISTA'S AFFIRMATIVE DEFENSES OF MERGER AND SCÈNES À
03:21:20 15 FAIRE, A REASONABLE JURY MUST FIND IN ARISTA'S FAVOR ON THIS
03:21:27 16 RECORD FOR THE SAME REASONS ALREADY STATED THAT MAKE CISCO'S
03:21:32 17 WORKS UNPROTECTABLE, THOSE SAME CONSTRAINTS AND LIMITATIONS
03:21:36 18 PROVE ARISTA'S DEFENSES.

03:21:42 19 AS TO FAIR USE, A REASONABLE JURY MUST FIND ON THIS RECORD
03:21:46 20 THAT ARISTA'S USE OF ANY AND ALL CISCO WORKS IS FAIR USE AS A
03:21:49 21 MATTER OF LAW, BASED ON ANY REASONABLE APPLICATION OF THE
03:21:53 22 STATUTORY FACTORS TO THIS RECORD, BOTH INDIVIDUALLY AND IN ANY
03:21:58 23 COMBINATION.

03:21:59 24 THE RECORD REQUIRES THIS RESULT BASED ON ANY COMBINATION
03:22:02 25 OF THE FOLLOWING EVIDENCE.

03:22:03 1 THE DEFECTS IN PROOF OF ORIGINAL CREATIVE EXPRESSION IN
03:22:07 2 THE ELEMENTS AND WORKS AT ISSUE FOR ALL THE REASONS ALREADY
03:22:11 3 STATED:

03:22:12 4 THE LIMITED PORTIONS, EVEN ALLEGEDLY COPIED;

03:22:16 5 ARISTA'S HIGHLY TRANSFORMATIVE USE OF THE CLI WITH
03:22:19 6 REVOLUTIONARY, AUTOMATED TOOLS, SOFTWARE AND HARDWARE, THAT
03:22:23 7 CREATED A NEW PARADIGM AND NEW MARKET;

03:22:27 8 AND THE LONG STANDING CUSTOM AND PRACTICE IN THE INDUSTRY,
03:22:30 9 INCLUDING BY CISCO, OF PERMITTING AND PROMOTING OTHER'S USE OF
03:22:35 10 CLI COMMANDS AND FEATURES IN COMMON THROUGH THE INDUSTRY;

03:22:37 11 AND ALSO, THE LACK OF ANY SUFFICIENT EVIDENCE OF MARKET
03:22:42 12 HARM OR POTENTIAL MARKET HARM.

03:22:44 13 A REASONABLE COPYRIGHT OWNER WOULD HAVE ACCEPTED ARISTA'S
03:22:48 14 USE HERE, GIVEN THE COMMON PRACTICE AND EXPECTATION IN THE
03:22:52 15 INDUSTRY. AS THE RECORD PROVES, CISCO DID, ITSELF, FOR MANY
03:22:57 16 YEARS BEFORE FILING THIS CASE.

03:22:59 17 ON ABANDONMENT, A REASONABLE JURY MUST FIND FOR ARISTA ON
03:23:04 18 ITS ABANDONMENT DEFENSE AS WELL BECAUSE THIS RECORD COMPELS A
03:23:10 19 FINDING THAT CISCO DEMONSTRATED ITS INTENT TO SURRENDER ANY
03:23:18 20 COPYRIGHTS IN ITS CLI THROUGH ITS ACTIONS IN THE INDUSTRY.

03:23:23 21 THE TRIAL RECORD SHOWS THAT CISCO ENCOURAGED THE
03:23:26 22 WIDESPREAD INDUSTRY USE OF CISCO'S CLI ELEMENTS TO ITS
03:23:30 23 CUSTOMERS AND NEVER PROTESTED ANYONE USING ITS CLI ALONE
03:23:35 24 WITHOUT ANY SOURCE CODE.

03:23:39 25 COPYRIGHT MISUSE.

03:23:41 1 THE SAME EVIDENCE THAT SUPPORTS ARISTA'S FAIR USE AND
03:23:44 2 ABANDONMENT DEFENSES, AS WELL AS CISCO'S DEFICIENT PROOF OF ITS
03:23:48 3 OWN CLAIMS OF COPYRIGHT INFRINGEMENT FOR ALL OTHER REASONS
03:23:52 4 ALREADY GIVEN, ALSO SEPARATELY PROVE ARISTA'S DEFENSE OF
03:23:56 5 COPYRIGHT MISUSE AS A MATTER OF LAW.

03:23:58 6 THE ONLY REASONABLE CONCLUSION ON THIS RECORD IS THAT
03:24:00 7 CISCO IS ATTEMPTING TO LEVERAGE ITS LIMITED COPYRIGHT CLAIMS,
03:24:05 8 IF ANY, AND ANY CLI ELEMENTS, TO STIFLE FAIR COMPETITION IN
03:24:12 9 MARKETS FOR PRODUCTS OR SWITCHES OR OPERATING SYSTEMS IN WHICH
03:24:15 10 CISCO HAS NO COPYRIGHT INTERESTS THAT IT CLAIMS WERE INFRINGED,
03:24:19 11 AND THAT IS AN ABUSE OF THE LIMITED COPYRIGHT MONOPOLY SEEKING
03:24:24 12 TO GAIN ANTICOMPETITIVE POWER NOT GRANTED BY CISCO'S
03:24:31 13 COPYRIGHTS.

03:24:33 14 THESE SAME FACTS, OF COURSE, ALSO SUPPORT THE EQUITABLE
03:24:36 15 DEFENSES THAT ARE FOR THE COURT TO DETERMINE. INCLUDING
03:24:43 16 LACHES, WAIVER AND ESTOPPEL, WHICH ARISTA WILL ADDRESS
03:24:47 17 SEPARATELY, OF COURSE.

03:24:49 18 AND FINALLY, THERE IS NO CAUSAL NEXUS HERE TO ANY DAMAGES.
03:24:54 19 CISCO HAS FAILED TO INTRODUCE SUFFICIENT EVIDENCE THAT ANY
03:24:59 20 COMMAND-LINE INTERFACE HAS ANY SEPARATE VALUE, OR THAT ANY OF
03:25:06 21 CISCO'S ALLEGED DAMAGES OR ARISTA'S PROFITS ARE ATTRIBUTABLE TO
03:25:10 22 ANY ALLEGED INFRINGEMENT.

03:25:12 23 CISCO'S DAMAGES CLAIMS FAIL BECAUSE CISCO LACKS THE
03:25:16 24 SUFFICIENT EVIDENCE TO PROVE ANY CAUSAL NEXUS BETWEEN COPYING
03:25:21 25 AND ITS ASSERTED DAMAGES.

03:25:23 1 AND AS TO THE MANUALS, CISCO LACKS ANY EVIDENCE AT ALL,
03:25:28 2 LET ALONE SUFFICIENT EVIDENCE, TO LINK DAMAGES TO THE ALLEGED
03:25:35 3 COPYING FROM CISCO'S TECHNICAL MANUALS.

03:25:40 4 AND NO DAMAGES CAN REASONABLY BE APPORTIONED BASED ON ANY
03:25:45 5 INFRINGEMENT OF THE MANUALS.

03:25:47 6 AND MR. ROSEN WILL ADDRESS THE OTHER ISSUES.

03:25:51 7 THE COURT: THANK YOU.

03:25:52 8 MR. ROSEN?

03:25:52 9 MR. ROSEN: GOOD AFTERNOON, YOUR HONOR. DAVID ROSEN
03:26:02 10 FOR ARISTA.

03:26:04 11 ARISTA MOVES FOR JUDGMENT AS A MATTER OF LAW THAT NO
03:26:06 12 REASONABLE JURY COULD FIND THAT ARISTA DIRECTLY INFRINGED OR
03:26:09 13 INFRINGES THE '526 PATENT.

03:26:12 14 INFRINGEMENT MUST BE PROVEN ON AN ELEMENT BY ELEMENT
03:26:15 15 BASIS, BUT CISCO HAS NOT OFFERED SUFFICIENT EVIDENCE TO SUPPORT
03:26:17 16 A FINDING OF INFRINGEMENT FOR AT LEAST THREE CLAIM LIMITATIONS.

03:26:22 17 FIRST, CISCO HAS NOT OFFERED SUFFICIENT EVIDENCE TO PROVE
03:26:25 18 THAT ARISTA'S PRODUCTS EXECUTE A PLURALITY OF MANAGEMENT
03:26:30 19 PROGRAMS OR ISSUE A PRESCRIBED COMMAND OF A SELECTED ONE OF THE
03:26:35 20 MANAGEMENT PROGRAMS.

03:26:37 21 CLAIMS 1 AND 14 OF THE '526 PATENT REQUIRE ISSUING A
03:26:42 22 PRESCRIBED COMMAND OF A MANAGEMENT PROGRAM. THE COURT
03:26:45 23 CONSTRUED "MANAGEMENT PROGRAMS" AS, TOOLS OR AGENTS CONFIGURED
03:26:49 24 TO EXECUTE USER-DIRECTED COMMANDS HAVING THEIR OWN RESPECTIVE
03:26:53 25 COMMAND FORMATS THAT PROVIDE MANAGEMENT FUNCTIONS.

03:26:57 1 ALTHOUGH CISCO'S EXPERT, DR. JEFFAY, TESTIFIED THAT ARISTA
03:27:02 2 EOS HAS AGENTS, HE DID NOT IDENTIFY A SINGLE PRESCRIBED COMMAND
03:27:06 3 THAT IS EXECUTED BY A SPECIFIC AGENT.

03:27:09 4 DR. JEFFAY'S TESTIMONY ABOUT EOS AGENTS, AS WELL AS ALL
03:27:14 5 OTHER EVIDENCE OFFERED BY CISCO ABOUT EOS AGENTS, IS NOT
03:27:17 6 SUFFICIENT EVIDENCE UPON WHICH THE JURY COULD PROPERLY FIND
03:27:22 7 THAT ARISTA'S PRODUCTS MEET THE TWO CLAIM LIMITATIONS THAT
03:27:24 8 DEPEND ON THE COURT'S CONSTRUCTION OF MANAGEMENT PROGRAMS.

03:27:29 9 ALSO, CISCO HAS NOT OFFERED EVIDENCE TO PROVE THAT
03:27:32 10 ARISTA'S PRODUCTS HAVE A COMMAND PARSE TREE, HAVING ELEMENTS
03:27:36 11 EACH SPECIFYING AT LEAST ONE GENERIC COMMAND -- PARDON ME, EACH
03:27:42 12 SPECIFYING AT LEAST ONE CORRESPONDING GENERIC COMMAND
03:27:45 13 COMPONENT, AND AT LEAST ONE COMMAND ACTION VALUE.

03:27:49 14 FIRST, CISCO'S EXPERT, DR. JEFFAY, NEVER IDENTIFIED OR
03:27:54 15 DEPICTED A SPECIFIC PARSE TREE IN ARISTA'S PRODUCTS.

03:27:57 16 SECOND, CISCO DID NOT OFFER SUFFICIENT EVIDENCE TO SHOW
03:28:01 17 THAT ANY PARSE TREE OR HIERARCHICAL DATA STRUCTURE IN ARISTA'S
03:28:05 18 PRODUCTS HAS ELEMENTS, EACH SPECIFYING AT LEAST ONE
03:28:11 19 CORRESPONDING GENERIC COMMAND COMPONENT.

03:28:12 20 THIRD, CISCO DID NOT OFFER SUFFICIENT EVIDENCE TO SHOW
03:28:16 21 THAT ANY PARSE TREE OR HIERARCHICAL DATA STRUCTURE IN ARISTA'S
03:28:20 22 PRODUCTS HAS ELEMENTS EACH SPECIFYING AT LEAST ONE COMMAND
03:28:27 23 ACTION VALUE.

03:28:28 24 IN FACT, DR. JEFFAY'S TESTIMONY SUPPORTS THE CONCLUSION
03:28:31 25 THAT THERE ARE ELEMENTS IN ARISTA'S PARSE TREE THAT HAVE NO

03:28:34 1 COMMAND ACTION VALUES.

03:28:35 2 ARISTA ALSO MOVES FOR JUDGMENT AS A MATTER OF LAW THAT NO
03:28:39 3 REASONABLE JURY COULD FIND THAT ARISTA INDUCED INFRINGEMENT OF
03:28:42 4 THE '526 PATENT.

03:28:44 5 TO PROVE INDUCED INFRINGEMENT, CISCO MUST PROVE THAT
03:28:48 6 ARISTA KNEW THAT THE ACTS IT WAS CAUSING WOULD INFRINGE THE
03:28:51 7 PATENT OR WILLFULLY BLINDED ITSELF TO THE INFRINGING NATURE OF
03:28:56 8 THE DIRECT INFRINGER'S ACTS.

03:28:59 9 AS THE SUPREME COURT HAS RECENTLY CLARIFIED, SHOWING THAT
03:29:02 10 THE DEFENDANT HAD KNOWLEDGE OF THE PATENT IS NOT SUFFICIENT TO
03:29:05 11 PROVE INDUCED INFRINGEMENT.

03:29:07 12 CISCO OFFERED INSUFFICIENT EVIDENCE TO PROVE THAT ARISTA
03:29:10 13 KNEW THAT THE ACTS IT WAS CAUSING WOULD INFRINGE THE PATENT.

03:29:14 14 CISCO'S PATENT INFRINGEMENT EXPERT, DR. JEFFAY, TESTIFIED
03:29:17 15 THAT USERS OF THE EOS PERFORM STEPS THAT ALLEGEDLY INFRINGE THE
03:29:21 16 PATENTS, BUT THE ONLY EVIDENCE UPON WHICH HE RELIED TO SUPPORT
03:29:25 17 THE KNOWLEDGE REQUIREMENT OF INDUCEMENT, WAS THE FACT THAT
03:29:28 18 CISCO HAD FILED A COMPLAINT ALLEGING THAT ARISTA INFRINGED THE
03:29:33 19 '526 PATENT.

03:29:34 20 IN SUM, CISCO DID NOT IDENTIFY SUFFICIENT EVIDENCE TO
03:29:37 21 SUPPORT A FINDING THAT ARISTA KNEW THAT IT WAS INDUCING
03:29:41 22 INFRINGEMENT OF THE '526 PATENT.

03:29:44 23 FOR SIMILAR REASONS, ARISTA MOVES FOR JUDGMENT AS A MATTER
03:29:48 24 OF LAW THAT NO REASONABLE JURY COULD FIND THAT ARISTA
03:29:51 25 CONTRIBUTED TO INFRINGEMENT BY ANOTHER.

03:29:53 1 TO PROVE CONTRIBUTORY PATENT INFRINGEMENT, CISCO MUST
03:29:57 2 PROVE THAT CISCO SUPPLIED AN INFRINGING COMPONENT WITH THE
03:30:00 3 KNOWLEDGE THAT THE COMPONENT WAS ESPECIALLY MADE FOR USE IN AN
03:30:05 4 INFRINGING MANNER.

03:30:06 5 CISCO OFFERED THE SAME EVIDENCE TO PROVE CONTRIBUTORY
03:30:09 6 INFRINGEMENT THAT IT OFFERED TO PROVE INDUCEMENT.

03:30:12 7 THE KNOWLEDGE REQUIREMENT OF CONTRIBUTORY INFRINGEMENT AND
03:30:17 8 INDUCED INFRINGEMENT ARE THE SAME.

03:30:19 9 FOR THE SAME REASONS THAT CISCO'S EVIDENCE IS INSUFFICIENT
03:30:22 10 TO SUPPORT A FINDING THAT ARISTA INDUCED INFRINGEMENT OF THE
03:30:26 11 '526 PATENT, IT IS ALSO INSUFFICIENT TO SUPPORT A FINDING THAT
03:30:30 12 ARISTA CONTRIBUTED TO THE INFRINGEMENT OF ANOTHER.

03:30:36 13 ARISTA ALSO MOVES FOR JUDGMENT AS A MATTER OF LAW THAT NO
03:30:40 14 REASONABLE JURY COULD FIND THAT INFRINGEMENT OF THE '526 PATENT
03:30:44 15 WAS WILLFUL.

03:30:44 16 THE COURT ALLOWED CISCO TO PRESENT AT TRIAL ITS CLAIM THAT
03:30:48 17 ARISTA WILLFULLY INFRINGED THE '526 PATENT BY SELLING EOS PLUS,
03:30:54 18 AFTER CISCO FILED ITS COMPLAINT, WHICH WAS THE ONLY BASIS THAT
03:30:58 19 CISCO ALLEGED FOR WILFULNESS IN ITS COMPLAINT AND IN ITS PATENT
03:31:02 20 LOCAL RULE DISCLOSURES.

03:31:05 21 SPECIFICALLY, THE COURT APPROVED A PATENT WILFULNESS JURY
03:31:08 22 INSTRUCTION THAT REQUIRED THAT TO PROVE THAT THE SALE OF THE
03:31:12 23 EOS PLUS IS AN ACT OF WILLFUL INFRINGEMENT, CISCO MUST PERSUADE
03:31:18 24 YOU THAT EOS PLUS IS A NEW PRODUCT COMPARED TO EOS.

03:31:21 25 CISCO PRESENTED INSUFFICIENT EVIDENCE THAT EOS PLUS IS A

03:31:25 1 NEW PRODUCT OR THAT ARISTA WILLFULLY INFRINGED '526 PATENT BY
03:31:31 2 SELLING EOS PLUS.

03:31:32 3 ASIDE FROM THE MENTION OF EOS PLUS IN CISCO'S OPENING
03:31:36 4 STATEMENT, THERE ARE ONLY TWO MENTIONS OF EOS PLUS IN THE
03:31:38 5 ENTIRE TRIAL RECORD.

03:31:39 6 ONE IS A CURSORY STATEMENT BY CISCO'S PATENT INFRINGEMENT
03:31:42 7 EXPERT, DR. JEFFAY, THAT HIS ANALYSIS WAS BASED ON THE SOFTWARE
03:31:46 8 THAT RUNS THE ARISTA PRODUCTS, INCLUDING EOS, EOS PLUS AND
03:31:52 9 VEOS.

03:31:52 10 THE OTHER INSTANCE IN THE RECORD IS A STATEMENT BY
03:31:55 11 ARISTA'S PATENT EXPERT, DR. CHASE, THAT HE WAS NOT FAMILIAR
03:31:59 12 WITH EOS PLUS AND DID NOT KNOW IF EOS PLUS WAS DISTINCT FROM
03:32:05 13 EOS.

03:32:05 14 IN SHORT, NO REASONABLE JURY COULD FIND WILLFUL
03:32:09 15 INFRINGEMENT BASED ON THE EVIDENCE IN THE RECORD.

03:32:11 16 FINALLY, YOUR HONOR, ARISTA MOVES FOR JUDGMENT AS A MATTER
03:32:15 17 OF LAW THAT CISCO HAS NOT PROVIDED SUFFICIENT EVIDENCE TO
03:32:17 18 SUPPORT A DAMAGES AWARD FOR THE '526 PATENT.

03:32:21 19 CISCO'S EXPERT, DR. CHEVALIER, OPINED THAT CISCO WAS
03:32:26 20 ENTITLED TO 2, TO \$2.2 MILLION OF DAMAGES FOR THE ARISTA'S
03:32:35 21 ALLEGED INFRINGEMENT OF THE '526 PATENT.

03:32:41 22 TO ARRIVE AT HER ESTIMATE, DR. CHEVALIER RELIED ON THE
03:32:45 23 OPINION OF CISCO'S PATENT INFRINGEMENT EXPERT, DR. JEFFAY, WHO
03:32:48 24 ESTIMATED THAT IT WOULD TAKE 20 ENGINEERS SIX MONTHS TO DESIGN
03:32:54 25 AROUND THE PATENTED TECHNOLOGY.

03:32:55 1 DR. CHEVALIER TOOK DR. JEFFAY'S ESTIMATE OF THE NUMBER OF
03:32:58 2 ENGINEERS REQUIRED FOR HALF A YEAR, AND THEN MULTIPLIED THAT BY
03:33:02 3 THE ESTIMATED SALARY OF AN ENGINEER. THE RESULTING 2 TO
03:33:10 4 \$2.2 MILLION FIGURE WAS THE ONLY OPINION ON ANY ACTUAL DAMAGES
03:33:14 5 NUMBER OFFERED IN THE CASE WITH RESPECT TO THE '526 PATENT.

03:33:18 6 HOWEVER, DR. JEFFAY'S DESIGN-AROUND OPINION DID NOT
03:33:21 7 INCLUDE ANY FACTS OR ANALYSIS CONCERNING HOW MUCH TIME IT WOULD
03:33:25 8 TAKE TO DESIGN-AROUND THE '526 PATENT ON A PER-COMMAND BASIS.

03:33:31 9 IF THE JURY ULTIMATELY CONCLUDES THAT ARISTA DOES NOT
03:33:34 10 INFRINGE ALL OF THE COMMANDS ACCUSED BY CISCO OF INFRINGEMENT
03:33:37 11 IN THIS CASE, OR IF THE COURT DECIDES THAT CISCO IS LIMITED AS
03:33:41 12 A MATTER OF LAW TO A SUBSET OF THE COMMANDS THAT IT IS ACCUSED
03:33:44 13 OF INFRINGEMENT, THEN THERE IS INSUFFICIENT EVIDENCE IN THE
03:33:48 14 RECORD FOR THE JURY TO APPORTION THE 2.0 TO \$2.2 MILLION
03:33:53 15 DAMAGES FIGURE PROVIDED BY DR. CHEVALIER.

03:33:56 16 ACCORDINGLY, THERE IS INSUFFICIENT EVIDENCE IN THE RECORD
03:33:58 17 TO SUPPORT A DAMAGES AWARD FOR INFRINGEMENT OF THE '526 PATENT.

03:34:03 18 THE COURT: THANK YOU.

03:34:05 19 ALL RIGHT. IS THAT EVERYTHING? THANK YOU VERY MUCH.

03:34:09 20 IT IS -- HAVING LISTENED TO THE GROUNDS FOR THE DEFENSE
03:34:13 21 JMOL, I WILL DEFER RULING UNTIL AFTER THE JURY RENDERS A
03:34:19 22 VERDICT, AND OF COURSE THAT'S WITHOUT PREJUDICE TO FURTHER
03:34:21 23 MOTIONS.

03:34:21 24 THE PLAINTIFF'S MOTION, I WILL SEE WHEN IT'S FILED AND
03:34:24 25 DETERMINE HOW TO RULE ON IT WHEN I SEE IT.

03:34:26 1 ALL RIGHT. IS THERE ANYTHING ELSE THIS AFTERNOON?

03:34:29 2 MR. VAN NEST: I DON'T BELIEVE SO, YOUR HONOR.

03:34:30 3 THE COURT: ALL RIGHT. I KNOW YOU HAVE A LOT OF WORK
03:34:32 4 AHEAD OF YOU, SO WE WILL BE ADJOURNED FOR THE DAY.

03:34:35 5 MR. VAN NEST: THANK YOU, YOUR HONOR.

03:34:36 6 MR. PAK: THANK YOU, YOUR HONOR.

03:34:36 7 (THE PROCEEDINGS WERE CONCLUDED AT 3:34 P.M.)

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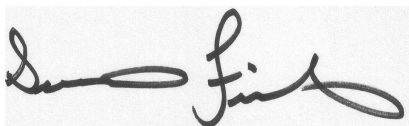
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 12/9/16